

No. 15386

United States
Court of Appeals
for the Ninth Circuit

F. NORMAN PHELPS and ALICE PHELPS,
Petitioners,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Transcript of Record

Petition to Review a Decision of the Tax Court of the
United States

FILED

MAR 12 1957

PAUL P. O'BRIEN, CLERK

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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NAMES AND ADDRESSES OF ATTORNEYS

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Los Angeles, California,
Attorney for Petitioner.

CHARLES K. RICE,

Assistant Attorney General,

LEE A. JACKSON,

Attorney,
Department of Justice,
Washington 25, D. C.,
Attorneys for Respondents.

The Tax Court of the United States

Docket No. 51282

F. NORMAN PHELPS and ALICE PHELPS,
Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Appearances:

For Petitioner:

Wellman P. Thayer, Esq.

Arthur H. Deibert, Esq.

William L. Kumler, Esq.

H. B. Thompson, Esq.

For Respondent:

Mark Townsend, Esq.

DOCKET ENTRIES

1953

Nov. 17—Petition received and filed. Taxpayer notified. Fee paid.

Nov. 18—Copy of petition served on General Counsel.

1954

Jan. 5—Answer filed by General Counsel.

Jan. 5—Request for hearing in Los Angeles filed by General Counsel.

Jan. 13—Notice issued placing proceeding on Los Angeles calendar. Service of answer and request made.

1955

Feb. 8—Hearing set April 25, 1955, Los Angeles.

Apr. 29—Hearing had before Judge Turner on petitioner's motion to continue generally on the Los Angeles, California, calendar. Motion granted, filed at hearing. Copies served.

May 16—Transcript of hearing 4/29/55 filed.

Aug. 4—Hearing set November 28, 1955, Los Angeles.

Aug. 16—Joint motion to place proceeding on the 9/12/55 Los Angeles, California, calendar, filed. 8/17/55 granted.

Aug. 18—Hearing set September 12, 1955, at Los Angeles.

Sept. 12—Hearing had before Judge Raum on the merits; on parties' written motion to consolidate with Dockets 51216 and 51265, granted. Stipulation of facts and exhibits 1A through 23X, and motion for consolidation, copies served, filed at hearing. Petitioner's brief 10/27/55, Respondent's brief 11/28/55, Petitioner's reply 12/19/55.

Oct. 20—Motion for extension of 45 days to file brief filed by taxpayer. 10/20/55 granted to 11/28/55.

Oct. 26—Transcript of hearing 9/12/55 filed.

Nov. 29—Brief filed by taxpayer. 11/30/55 copy served.

1955

Dec. 27—Motion for extension to January 28, 1956 to file brief, filed by respondent. 12/29/55 granted.

1956

Jan. 27—Motion for extension to February 6, 1956 to file brief, filed by respondent. 1/30/56 granted.

Feb. 6—Answer brief filed by respondent.

Mar. 5—Motion for extension of time to 3/21/56 to file reply brief, filed by petitioner. 3/5/56 granted.

Mar. 26—Motion for leave to file reply brief, reply brief lodged, filed by petitioner. 3/27/56 granted. 3/28/56 served.

July 19—Findings of fact and opinion filed, Raum, J. Decision will be entered for respondent. Served 7/19/56.

July 31—Decision entered, Judge Raum, Division 11. Served 8/1/56.

Oct. 25—Petition for review by United States Court of Appeals, Ninth Circuit, with assignments of error filed by petitioner.

Oct. 31—Proof of service filed.

Nov. 13—Designation of contents of record on review with proof of service thereon, filed by petitioner.

Nov. 14—Designation of additional portions of record with proof of service filed.

[Title of Tax Court and Cause.]

PETITION

The above named petitioners hereby petition for a redetermination of the deficiency set forth by the Commissioner of Internal Revenue in his notice of deficiency (ARC - Ap:SF:LA - 90D:PAK), dated August 19, 1953, and as a basis of this proceeding allege as follows:

1. The petitioners are individuals residing at 66 Hampton Road, Piedmont, California. The return for the period herein involved was filed with the Collector for the First Collection District of California.

2. The notice of deficiency (a copy of which is attached and marked Exhibit A) was mailed to the petitioners on August 19, 1953.

3. The deficiencies as determined by the Commissioner are in income taxes for the calendar year 1948 in the amount of \$107,926.06, of which the entire amount is in dispute.

4. The determination of tax set forth in the said notice of deficiency is based upon the following errors:

(a) The Commissioner erred in determining that the 1948 distribution indicated opposite the following named corporations were taxable dividends within the meaning of Section 115(g) of the Internal Revenue Code.

Capitol Chevrolet Co.	\$ 75,518.30
Howell Chevrolet Co.	46,508.00
Mid-Valley Chevrolet Co.	74,340.50
	<hr/>
	\$196,366.80

(b) The Commissioner erred in failing to find that the distributions itemized in paragraph (a) hereof were distributions in partial liquidation, redemption and cancellation of the following shares of stock in the indicated corporations which shares were owned by the petitioners.

Capitol Chevrolet Co.	130 shares
Mid-Valley Chevrolet Co.	130 shares
Howell Chevrolet Co.	100 shares

(c) The Commissioner erred in determining that there was a deficiency of income tax for the calendar year 1948 in the amount of \$107,926.06.

5. The facts upon which petitioners rely as the basis of this proceeding are as follows:

(a) On or about April 1, 1946 Capitol Chevrolet Co., Mid-Valley Chevrolet Co. and Howell Chevrolet Co. were incorporated under the laws of the State of California. At that time petitioners were issued stock of said corporations in the amounts indicated and for the cash consideration shown.

Capitol Chevrolet Co.	170 shares	\$13,000.00
Mid-Valley Chevrolet Co.	153 shares	\$13,000.00
Howell Chevrolet Co.	120 shares	\$10,000.00

(b) At all times herein material, Capitol Chevrolet Co., Mid-Valley Chevrolet Co. and Howell Chevrolet Co. operated as retail dealers in the sale of Chevrolet motor cars under franchise with Chev-

rolet Motor Division of General Motors Corporation. By identical letters, dated November 1, 1948, addressed to Capitol Chevrolet Co., Mid-Valley Chevrolet Co. and Howell Chevrolet Co., the local Zone Manager of the Chevrolet Motor Division of General Motors Corporation advised each of the respective corporations that their operations were unsatisfactory in that some of the stock of each of said corporations was held by James A. Kenyon, Trustee for Patricia May Kenyon, the beneficiary not being an operating participant in the business. Said letters further provided that delivery of the selling agreements or franchises enclosed therewith was conditioned upon the elimination of said Trust from proprietary interests in said corporations not later than April 30, 1949.

(c) Concurrently with the receipt of the aforesaid letter from Chevrolet Motor Division, James A. Kenyon and F. Norman Phelps, shareholders in said corporations, were advised by the local Zone Manager of Chevrolet Motor Division that it was the desire of Chevrolet Motor Division that James A. Kenyon and F. Norman Phelps continue their proprietary participations in the three corporations in the same ratio as they had theretofore participated.

(d) Accordingly, meetings of the Board of Directors of said corporations were held on December 21, 1948, at which resolutions for partial liquidation of said corporations were adopted, authorizing the corporations to reduce their stated capital and to redeem and cancel the following shares:

Capitol Chevrolet Co.	260 shares
Mid-Valley Chevrolet Co.	260 shares
Howell Chevrolet Co.	100 shares

(e) Alternatively, the plans of partial liquidation provided that if James A. Kenyon could obtain court authorization he would purchase from the Patricia May Kenyon Trust the following shares of said corporations and the corporations would redeem, retire and cancel so much of the remaining stock as would be necessary to equalize the interests of Messrs. James A. Kenyon and F. Norman Phelps.

Capitol Chevrolet Co.	40 shares
Mid-Valley Chevrolet Co.	40 shares
Howell Chevrolet Co.	20 shares

(f) Thereafter James A. Kenyon filed with the Superior Court of Los Angeles County a petition seeking authorization as an individual to purchase for himself as trustee of the Patricia May Kenyon Trust the following shares of common capital stock.

Capitol Chevrolet Co.	40 shares
Mid-Valley Chevrolet Co.	40 shares
Howell Chevrolet Co.	20 shares

However, because all of the contingent remaindemen could not be located and served said authorization could not be obtained.

(g) Therefore, pursuant to said plans of partial liquidation theretofore adopted by the respective corporations as aforesaid, distributions in redemption and cancellation of the stocks of said corporations were made as follows insofar as your petitioners were concerned:

		Amt. Received
130 shares	Capitol Chevrolet Co.	\$ 75,518.30
130 shares	Mid-Valley Chevrolet Co.	74,340.50
100 shares	Howell Chevrolet Co.	46,508.00
		<hr/>
		\$196,366.80

(h) Petitioners properly reported the gain realized from the redemption of said stocks on their 1948 Federal income return as follows:

Name of Corporation	Amount Received	Stock Claimed	Gain Reported
Capitol Chevrolet Co.	\$ 75,518.30	\$13,000.00	\$ 62,518.30
Howell Chevrolet Co.	46,508.00	10,000.00	36,508.00
Mid-Valley Chevrolet Co.	74,340.50	13,000.00	61,340.50
		<hr/>	<hr/>
Totals	\$196,366.80	\$36,000.00	\$160,366.80

Wherefore, the petitioners pray that this Court may hear the proceeding and determine that there is no deficiency in income taxes for the calendar year 1948.

Dated: November 2, 1953.

Respectfully submitted,

/s/ WELLMAN P. THAYER,

/s/ ARTHUR H. DEIBERT,

/s/ WILLIAM L. KUMLER,

/s/ H. B. THOMPSON,

Counsel for Petitioners

Duly Verified.

EXHIBIT "A"

1250 Subway Terminal Bldg., 417 South Hill St.,
Los Angeles 13, California

ARC-Ap:SF LA:90D:PAK

Aug. 19, 1953

Mr. F. Norman Phelps and Mrs. Alice Phelps
Husband and Wife

1300 K Street, Sacramento 14, California

Dear Mr. and Mrs. Phelps:

You are advised that the determination of your income tax liability for the taxable year ended December 31, 1948 discloses a deficiency of \$107,-926.06, as shown in the statement attached.

In accordance with the provisions of existing internal revenue laws, notice is hereby given of the deficiency mentioned.

Within 90 days from the date of the mailing of this letter you may file a petition with The Tax Court of the United States, at its principal address, Washington 4, D. C., for a redetermination of the deficiency. In counting the 90 days you may not exclude any day unless the 90th day is a Saturday, Sunday, or legal holiday in the District of Columbia in which event that day is not counted as the 90th day. Otherwise Saturdays, Sundays, and legal holidays are to be counted in computing the 90-day period.

Should you not desire to file a petition, you are requested to execute, in duplicate, the enclosed form and forward it to the Assistant Regional Commissioner, Appellate, 1250 Subway Terminal Build-

ing, 417 South Hill Street, Los Angeles 13, California. The signing and filing of this form will expedite the closing of your return by permitting an early assessment of the deficiency, and will prevent the accumulation of interest, since the interest period terminates 30 days after receipt of the form, or on the date of assessment, or on the date of payment, whichever is earlier.

Very truly yours,

T. Coleman Andrews,

Commissioner of Internal Revenue

/s/ By W. T. Tignor,

Associate Chief Appellate Division

PAKar:vmc—Enclosures: Statement, Form 1276,
Agreement Form.

Statement

Tax Liability for the Taxable Year Ended
December 31, 1948

Year	Deficiency
1948	
Income Tax	\$107,926.06

In making this determination of your income tax liability careful consideration has been given to the report of examination dated November 23, 1951, to your protest dated April 23, 1952, and to the statements made at hearings held on May 2, 1952 and May 4 and 19, 1953.

A copy of this letter and statement has been mailed to your representative, Mr. H. B. Thompson, 1104 Pacific Mutual Building, Los Angeles 14,

California, in accordance with the authorization contained in the power of attorney executed by you.

ADJUSTMENTS TO NET INCOME

Taxable Year Ended December 31, 1948

Net income as disclosed by return.....	\$193,680.54
Additional income:	
(a) Income from dividends	196,366.80
	<hr/>
Total.....	\$390,047.34
Reduction:	
(b) Long-term capital gain eliminated.....	\$ 80,183.40
	<hr/>
Net income adjusted.....	\$309,863.94

EXPLANATION OF ADJUSTMENTS

(a) and (b) In your return there is reported capital gains amounting to \$160,366.80, of which 50% or \$80,183.40 was included in income as long-term capital gain, arising from distributions in alleged partial liquidation of stocks of corporations, as shown in the following:

Name of Corporation	Amount		Gain
	Received	Stock Claimed	Reported
Capitol Chevrolet Co.	\$ 75,518.30	\$13,000.00	\$ 62,518.30
Howell Chevrolet Co.	46,508.00	10,000.00	36,508.00
Mid-Valley Chevrolet Co.	74,340.50	13,000.00	61,340.50
	<hr/>	<hr/>	<hr/>
Totals	\$196,366.80	\$36,000.00	\$160,366.80

It is determined that said distributions were essentially equivalent to the distributions of taxable dividends within the meaning of section 115(g) of the Internal Revenue Code.

Accordingly, the amount of such distributions, aggregating \$196,366.80, is added to your income as representing dividends received and the amount of long-term capital gain, \$80,183.40, reported in your return from such transactions is eliminated from income.

COMPUTATION OF ALTERNATIVE TAX

Taxable Year Ended December 31, 1948

Net income adjusted	\$309,863.94
Less: Excess of net long-term capital gain over net short-term capital loss	5,000.00
Ordinary net income	\$304,863.94
Less: Exemptions	3,000.00
Balance, subject to surtax and normal tax.....	\$301,863.94
One-half of \$301,863.94	\$150,931.97
Tentative surtax	\$108,130.81
Tentative normal tax at 3%.....	4,527.96
Total	\$112,658.77
Less reduction under Sec. 12(c), I.R.C.	13,254.23
Partial tax on one-half of net income.....	\$ 99,404.54

COMPUTATION OF ALTERNATIVE TAX

Taxable Year Ended December 31, 1948

Combined partial tax (\$99,404.54 x 2).....	\$198,809.08
Plus: 50 per cent of \$5,000.00.....	2,500.00
Combined alternative tax	\$201,309.08

COMPUTATION OF TAX

Taxable Year Ended December 31, 1948

Net income adjusted	\$309,863.94
Less: Exemptions	3,000.00
Balance, subject to surtax and normal tax.....	\$306,863.94
One-half of \$306,863.94	\$153,431.97
Tentative surtax	\$110,305.81
Tentative normal tax at 3%.....	4,602.96
Total	\$114,908.77
Less reduction under Sec. 12(c), I.R.C.	13,473.61
Total normal tax and surtax on one-half of net income.....	\$101,435.16

Combined normal tax and surtax (\$101,435.16 x 2)	\$202,870.32
Combined alternative tax	\$201,309.08
Correct income tax liability.....	\$201,309.08
Income tax liability shown on return, account	
No. 3194309	\$ 93,383.02
Deficiency of income tax	\$107,926.06

[Endorsed]: T.C.U.S. Filed Nov. 17, 1953.

[Title of Tax Court and Cause.]

ANSWER

The Commissioner of Internal Revenue, by his attorney, Daniel A. Taylor, Chief Counsel, Internal Revenue Service, for answer to the petition of the above-named taxpayers, admits, denies and alleges as follows:

1. Admits that the petitioners are individuals, that they filed a return for the period herein involved. For lack of sufficient information, denies that petitioners reside at 66 Hampton Road, Piedmont, California; denies that the return for the period herein involved was filed with the Collector for the First Collection District of California.

2 and 3. Admits the allegations contained in paragraphs 2 and 3 of the petition.

4. Denies the allegations of error contained in paragraph 4 of the petition and all subparagraphs thereof.

5. Denies the allegations contained in paragraph 5 of the petition and all subparagraphs thereof.

6. Denies generally and specifically each and every allegation contained in the petition not heretofore expressly admitted, qualified or denied.

Wherefore, it is prayed that the determination of the Commissioner be approved.

/s/ DANIEL A. TAYLOR, REM
Chief Counsel, Internal Revenue
Service

Of Counsel:

Woolvin Patten, Acting Regional Counsel
E. C. Crouter, Associate Appellate Counsel
R. E. Maiden, Jr., Assistant Appellate Counsel
John J. Burke, Special Attorney
Internal Revenue Service

[Endorsed]: T.C.U.S. Filed Jan. 5, 1954.

[Title of Tax Court and Cause.]

STIPULATION OF FACTS

It Is Hereby Stipulated and Agreed by and between the parties hereto by their respective counsel of record that the following facts shall be taken as true without prejudice to the right of either party to submit material and competent evidence of any other facts not inconsistent herewith:

1. At all times herein material Petitioners, F. Norman Phelps and Alice Phelps, were husband and wife, residing in Piedmont, California. They filed a joint return for the calendar year 1948 with the Collector of Internal Revenue for the Sixth

Collection District of California. A copy of their federal income tax return for the year 1948 is attached hereto as Joint Exhibit 1-A.

2. At all times herein material Petitioners, Jackson Howell and Virginia Howell, were husband and wife, residing in Los Angeles County, California. They filed a joint return for the calendar year 1948 with the Collector of Internal Revenue for the Sixth Collection District of California. A copy of their federal income tax return for the year 1948 is attached hereto as Joint Exhibit 2-B.

3. At all times herein material the James A. Kenyon Trust was a trust created on August 8, 1941 by James A. Kenyon for the benefit of his adopted daughter, Patricia May Kenyon. A copy of the federal income tax return of said trust for the year 1948 is attached hereto as Joint Exhibit 3-C.

4. At all times herein material James A. Kenyon, the creator of said trust, was also the Trustee thereof.

5. The James A. Kenyon Trust is the same trust which is sometimes referred to as the Patricia May Kenyon Trust and/or Patricia Kenyon Pearson Trust. A copy of the document creating the James A. Kenyon Trust is attached hereto and made a part hereof as Joint Exhibit 4-D.

6. At all times herein material J. A. K. Co. was a corporation, all of whose stock was owned by James A. Kenyon, individually.

7. At all times herein material, Capitol Chevrolet Co. was a corporation duly organized and existing

under and by virtue of the laws of the State of California, with its principal place of business in Sacramento, California. Capitol Chevrolet Co. was incorporated on April 10, 1946 and at all times herein material it had but one class of stock outstanding. From the date of its incorporation to December 21, 1948 the ownership of all of its outstanding stock was as follows:

Shareholder	No. of Shares
F. Norman Phelps	212
Alice Phelps	213
James A. Kenyon, Trustee of Patricia May Kenyon Trust	170
J. A. K. Co.....	255

8. Howell Chevrolet Co. was incorporated on April 10, 1946 and at all times herein material it had but one class of stock outstanding. From the date of its incorporation to December 21, 1948 the ownership of all of its outstanding stock was as follows:

Shareholder	No. of Shares
Jackson Howell	300
F. Norman Phelps	150
Alice Phelps	150
James A. Kenyon, Trustee of Patricia May Kenyon Trust	120
J. A. K. Co.	180

9. Mid-Valley Chevrolet Co. was incorporated on April 10, 1946 and at all times herein material it had but one class of stock outstanding. From the date of its incorporation to December 21, 1948 the ownership of all of its outstanding stock was as follows:

Shareholder	No. of Shares
F. Norman Phelps	213
Alice Phelps	212
James A. Kenyon, Trustee of Patricia May Kenyon Trust	170
J. A. K. Co.	255

10. At all times herein material F. Norman Phelps, James A. Kenyon and Alice Phelps were President, Vice President and Secretary-Treasurer, respectively, of Capitol Chevrolet Co.

11. At all times herein material F. Norman Phelps, Joseph E. Carpenter and James A. Kenyon were President, Vice President and Secretary-Treasurer, respectively, of Mid-Valley Chevrolet Co.

12. At all times herein material Jackson Howell, F. Norman Phelps and James A. Kenyon were respectively President, Vice President and Secretary-Treasurer, of Howell Chevrolet Co.

13. On December 21, 1948, pursuant to resolutions adopted by the Board of Directors of Capitol Chevrolet Co. at a meeting held on said date, Capitol Chevrolet Co. distributed the following amounts of money to the following named shareholders in redemption of the following number of shares set forth beside their respective names, to wit:

Shareholder	Amt. Distributed	Shares Redeemed
F. Norman Phelps	\$ 37,759.15	65
Alice Phelps	37,759.15	65
Patricia May Kenyon Trust.....	75,518.30	130

A copy of the minutes of the meeting of the Board of Directors of Capitol Chevrolet Co. held on December 21, 1948 is attached hereto as Jt. Exh. 5-E.

14. On December 21, 1948, pursuant to resolutions adopted by the Board of Directors of Mid-Valley Chevrolet Co. at a meeting held on said date, Mid-Valley Chevrolet Co. distributed the following amounts of money to the following named shareholders in redemption of the following number of shares set forth beside their respective names, to wit:

Shareholder	Amt. Distributed	Shares Redeemed
F. Norman Phelps	\$ 37,170.25	65
Alice Phelps	37,170.25	65
Patricia May Kenyon Trust.....	74,340.50	130

A copy of the minutes of the meeting of the Board of Directors of Mid-Valley Chevrolet Co. held on December 21, 1948 is attached hereto as Joint Exhibit 6-F.

15. On December 21, 1948, pursuant to resolutions adopted by the Board of Directors of Howell Chevrolet Co. at a meeting held on said date, Howell Chevrolet Co. distributed the following amounts of money to the following named shareholders in redemption of the following number of shares set forth beside their respective names, to wit:

Shareholder	Amt. Distributed	Sharers Redeemed
F. Norman Phelps	\$ 23,254.00	50
Alice Phelps	23,254.00	50
Patricia May Kenyon Trust.....	46,508.00	100
Jackson Howell	46,508.00	100

A copy of the minutes of the meeting of the Board of Directors of Howell Chevrolet Co. held on December 21, 1948 is attached hereto as Joint Exhibit 7-G.

16. At the time of each of the foregoing distributions by Capitol Chevrolet Co., Mid-Valley Chevrolet Co. and Howell Chevrolet Co. the accumulated earnings and profits of each of the said corporations was in excess of the total amount distributed to its shareholders.

17. Chevrolet Motor Division of General Motors Corporation had a policy that no interest in any Chevrolet dealership should be owned by a trust or by a holding company.

18. At no time from the date of incorporation of either Capitol Chevrolet Co., Mid-Valley Chevrolet Co. or Howell Chevrolet Co. to and including December 31, 1948 did any one of said corporations declare or pay a dividend to its shareholders.

19. At all times herein material each of the aforesaid corporations, to wit: Capitol Chevrolet Co., Mid-Valley Chevrolet Co. and Howell Chevrolet Co. was engaged in the business of selling Chevrolet automobiles and each of said corporations operated under a separate "Annual Direct Dealer Selling Agreement" issued by the Chevrolet Motor Division of the General Motors Corporation.

20. On June 1, 1949 James A. Kenyon, as Trustee of the Patricia May Kenyon Trust, filed with the clerk of the Superior Court in and for the

County of Los Angeles, State of California, a petition for an order directing him to sell forty shares of stock of Capitol Chevrolet Co., forty shares of stock of Mid-Valley Chevrolet Co. and twenty shares of stock of Howell Chevrolet Co. then held by him as Trustee for the said Trust to the highest bidder at a sale to be conducted by an officer appointed by the Court and subject to such terms and conditions as the Court might direct. A copy of this petition is attached hereto as Joint Exhibit 8-H. Proceedings in this action were continued until July, 1950 when the need for the order prayed for in the petition disappeared by reason of the sales of the Trust stock mentioned in Paragraph 22 below and by reason of the complete liquidation of Mid-Valley Chevrolet Co. mentioned in Paragraph 23 below.

21. During the year 1950 and prior to July 26, 1950, J.A.K. Co. was completely liquidated and all of the stock held by it in each of the three corporations, to wit: Capitol Chevrolet Co., Mid-Valley Chevrolet Co., and Howell Chevrolet Co., were distributed to James A. Kenyon in his individual capacity.

22. On July 26, 1950, pursuant to resolutions adopted by the Boards of Directors of Capitol Chevrolet Co., Mid-Valley Chevrolet Co. and Howell Chevrolet Co. in meetings held on that date:

(a) Capitol Chevrolet Co. purchased from James A. Kenyon, individually, the 255 shares of stock then owned by him in said corporation and pur-

chased from James A. Kenyon as Trustee of the James A. Kenyon Trust the forty shares of stock of that corporation then held by that Trust;

(b) Howell Chevrolet Co. purchased from James A. Kenyon, individually, the 180 shares of stock in that corporation then owned by him and purchased from James A. Kenyon, as Trustee of the James A. Kenyon Trust, the twenty shares of stock in said corporation then owned by that trust;

(c) Mid-Valley Chevrolet Co. purchased from F. Norman Phelps the 148 shares of stock in that corporation then owned by him; and

(d) Mid-Valley Chevrolet Co. purchased from Alice Phelps the 147 shares of stock in that corporation then owned by her.

23. On July 26, 1950, the Board of Directors of Mid-Valley Chevrolet Co. adopted a plan of complete liquidation of said corporation and thereafter, and prior to the close of the year 1950, the said Mid-Valley Chevrolet Co. was completely liquidated and dissolved and all of its assets transferred to its shareholders.

24. During the years 1948 and 1949 Jackson Howell received the following amounts of compensation for services rendered by him as President of Howell Chevrolet Co.:

1948	\$50,690.89
1949	\$48,752.25

25. Attached hereto and marked Joint Exhibits 9-I, 10-J, 11-K, 12-L and 13-M, respectively, are the

corporate income tax returns of the Howell Chevrolet Company for the taxable years 1946 to 1950, inclusive.

26. Attached hereto and marked Joint Exhibits 14-N, 15-O, 16-P, 17-R and 18-S, respectively, are the corporate income tax returns of the Mid-Valley Chevrolet Co. for the taxable years 1946 to 1950, inclusive.

27. Attached hereto and marked Joint Exhibits 19-T, 20-U, 21-V, 22-W and 23-X, respectively, are the corporate income tax returns of the Capitol Chevrolet Co. for the taxable years 1946 to 1950, inclusive.

28. At all times herein material J.A.K. Co. was a holding company with the shares of stock of Capitol Chevrolet Co., Mid-Valley Chevrolet Co. and Howell Chevrolet Co. constituting substantially all of its assets.

29. The shares of stock redeemed by Capitol Chevrolet Co., Mid-Valley Chevrolet Co. and Howell Chevrolet Co., as set forth in Paragraphs 13, 14 and 15 hereof, were in each case cancelled by the respective corporations and their stated capital reduced accordingly.

30. Capitol Chevrolet Co., Mid-Valley Chevrolet Co. and Howell Chevrolet Co. were corporations until 1944 when they were dissolved and liquidated and limited partnerships were substituted therefor. In 1946 these limited partnerships were dissolved and succeeded by corporations bearing the names of

the original corporations. The financial interests of the various individuals remained in substantially the same ratio throughout the transitions.

31. On May 2, 1955 petitioners F. Norman Phelps and Alice Phelps made a payment to the Director of Internal Revenue at Los Angeles, California, in the amount of \$107,926.00 with direction that \$107,900.00 of said amount be applied against the asserted deficiency which is the subject matter of the proceeding in Docket No. 51282 and \$26.06 be applied against interest, if any, accrued to that date. The said amount is held in the Director's suspense account.

/s/ WELLMAN P. THAYER,
Counsel for Petitioners, F. Norman Phelps, Alice Phelps and James A. Kenyon Trust, James A. Kenyon, Trustee.

/s/ CAMERON B. AIKEN,
Counsel for Petitioners, Jackson Howell and Virginia Howell.

/s/ JOHN POTTS BARNES, REM
Chief Counsel, Internal Revenue Service, Counsel for Respondent.

[Endorsed]: T.C.U.S. Filed Sept. 12, 1955.

26 T. C. No. 105

Tax Court of the United States

Jackson Howell and Virginia Howell, Petitioners,
vs. Commissioner of Internal Revenue, Re-
spondent.

James A. Kenyon Trust, James A. Kenyon, Trus-
tee, Petitioner, vs. Commissioner of Internal
Revenue, Respondent.

F. Norman Phelps and Alice Phelps, Petitioners,
vs. Commissioner of Internal Revenue, Re-
spondent.

Docket Nos. 51216, 51265, 51282

Filed July 19, 1956

FINDINGS OF FACT AND OPINION

Distributions in redemption of stock owned by a trust as a first step in an integrated plan to eliminate the trust as a stockholder held not to have been made at such time and in such manner as to be essentially equivalent to distributions of taxable dividends under Section 115(g), I.R.C. 1939. Cf. *Carter Tiffany*, 16 T.C. 1443. However, distributions to other stockholders in redemption of some of their shares in such manner as to leave them with the same fractional interests in the corporations held to be governed by Section 115(g). Cf. *James F. Boyle*, 14 T.C. 1382, affirmed, 187 F.2d 557 (C.A. 3).

Cameron B. Aiken, Esq., for the Petitioners in
Docket No. 51216. Wellman P. Thayer, Esq., for

the petitioners in Docket Nos. 51265 and 51282. Mark Townsend, Esq., for the respondent.

The respondent determined the following deficiencies in the income taxes of petitioners:

	Year	Amount
Jackson Howell and Virginia Howell	1948	\$ 20,957.40
	1949	2,729.16
James A. Kenyon Trust, James A. Kenyon, Trustee	1948	96,057.27
F. Norman Phelps and Alice Phelps	1948	107,926.06

The question presented is whether distributions made by three corporations to the petitioners during 1948 in the redemption of a portion of their stock in such corporations were made at such time and in such manner as to be essentially equivalent to the distribution of taxable dividends.

In the case of petitioners Jackson Howell and Virginia Howell an issue raised with respect to the amount of compensation received by Jackson Howell from Howell Chevrolet Co. during the years 1948 and 1949 has been settled by stipulation.

Findings of Fact

A portion of the facts have been stipulated; they are incorporated herein by reference as part of these findings.

Petitioners Jackson Howell and Virginia Howell, husband and wife, reside in Los Angeles County, California. They filed a joint return for the calendar year 1948 with the then collector of internal revenue for the sixth district of California.

The James A. Kenyon Trust was created on August 8, 1941, by James A. Kenyon for the benefit of his adopted daughter, Patricia May Kenyon. It is sometimes referred to as the Patricia May Kenyon Trust and/or Patricia Kenyon Pearson Trust. The trustee was its creator, James A. Kenyon (hereinafter referred to as Kenyon). It was irrevocable and Kenyon had no beneficial interest in the income or corpus thereof other than a remote reversionary interest. Kenyon, as trustee, was specifically given power in the trust instrument to deal with the property of the Trust as absolute owner including the power of sale.

Petitioners F. Norman Phelps (hereinafter referred to as Phelps) and Alice Phelps, husband and wife, reside in Piedmont, California. They filed a joint return for the calendar year 1948 with the then collector of internal revenue for the sixth district of California.

At all times material herein J. A. K. Co. was a corporation, all of the stock of which was owned by Kenyon, individually. It was a holding company with shares of stock of Capitol Chevrolet Co., Mid-Valley Chevrolet Co. and Howell Chevrolet Co. constituting substantially all of its assets.

Capitol Chevrolet Co. was incorporated on April 10, 1946, and had but one class of stock outstanding. Phelps, Kenyon and Alice Phelps were President, Vice President and Secretary-Treasurer, respectively. From the date of its incorporation to December 21, 1948, the ownership of all of its outstanding stock was as follows:

Shareholder	No. of Shares
F. Norman Phelps	212
Alice Phelps	213
James A. Kenyon, Trustee of Patricia May Kenyon Trust	170
J. A. K. Co.	255

Howell Chevrolet Co. was incorporated on April 10, 1946, and had but one class of stock outstanding. Jackson Howell, Phelps and Kenyon were President, Vice President and Secretary-Treasurer, respectively. From the date of its incorporation to December 21, 1948, the ownership of all of its outstanding stock was as follows:

Shareholder	No. of Shares
Jackson Howell	300
F. Norman Phelps	150
Alice Phelps	150
James A. Kenyon, Trustee of Patricia May Kenyon Trust	120
J. A. K. Co.	180

Mid-Valley Chevrolet Co. was incorporated on April 10, 1946, and had but one class of stock outstanding. Phelps, Joseph E. Carpenter and Kenyon were President, Vice President and Secretary-Treasurer, respectively. From the date of its incorporation to December 21, 1948, the ownership of all of its outstanding stock was as follows:

Shareholder	No. of Shares
F. Norman Phelps	213
Alice Phelps	212
James A. Kenyon, Trustee of Patricia May Kenyon Trust	170
J. A. K. Co.	255

At all times herein material each of the cor-

porations, Capitol Chevrolet Co., Mid-Valley Chevrolet Co. and Howell Chevrolet Co., was engaged in the business of operating a Chevrolet dealership under a separate "Direct Dealer Selling Agreement" with the Chevrolet Motor Division of the General Motors Corporation (hereinafter referred to as Chevrolet). Each of these dealerships was located within the Pacific Coast Region.

From the year 1921 to April 10, 1946, petitioner Phelps was employed by Chevrolet, and during that period he occupied, successively, the positions of retail salesman, used car manager, sales manager, district manager, office manager, assistant zone manager, city sales manager, zone manager, assistant regional manager and regional manager for the Pacific Coast Region of Chevrolet.

Kenyon had practically the same background of experience with Chevrolet Motor Division of General Motors Corporation as Phelps.

From 1929 until 1933 Jackson Howell was employed by General Motors Acceptance Corporation, and from 1933 until 1944 he was employed by Chevrolet. During the latter period he occupied, successively, the offices of district manager, organization manager of Los Angeles, assistant zone manager of Los Angeles, branch manager in Great Falls, Montana, branch manager at Oakland, California, and assistant regional manager at Oakland, California.

The terms and conditions governing "all transactions, dealings and relations" between Chevrolet and each of its dealers are set forth in a written

agreement called a "Direct Dealer Selling Agreement". This agreement is in force for a period of one year ending on October 31st. Paragraph "Third" contains the names of the individuals who actively participate in the ownership and are responsible for the operation of the dealership. Paragraph 29 provides that either Chevrolet or the dealer may terminate the agreement by written notice of termination in the event that the other party violates or fails to comply with any of its terms or provisions, and also lists certain other causes which might result in its termination by Chevrolet. The last paragraph of the agreement states that "There are no other agreements or understandings, either oral or in writing, between the parties affecting this Agreement or relating to the sale or servicing of Chevrolet motor vehicles, chassis, parts or accessories."

On or about September 1, 1948, J. L. Connell, the Regional Manager of the Pacific Coast Region of Chevrolet, called Phelps to his office for a conference. Connell then informed Phelps that Chevrolet had established a new policy that no trust or holding company could own stock in a Chevrolet dealership, and that steps should be taken to eliminate the stock ownership of the James A. Kenyon Trust and J. A. K. Co. in the three corporations. Phelps assured Connell that he had been with Chevrolet long enough to know that when it requested them to take the trust and holding company out of the dealerships, this would have to be done, and they would comply with this request im-

mediately. At this conference Connell also suggested to Phelps that, because the operation of the dealerships had been mutually satisfactory, he felt that it would be more than fair that the Phelps, Kenyon, and Howell interests each retain, after meeting the new policy, the same per cent of ownership in the dealerships. In making this suggestion Connell was not "quoting" Chevrolet policy, and did not intend any implied threat whatsoever that if it were not followed a new selling agreement would not be issued. The only policy Chevrolet had with respect to stock ownership was that any person listed in paragraph "Third" of the Direct Dealer Selling Agreement must own outright a minimum of twenty-five per cent of the issued stock of the corporation.

Following his conference with Connell, Phelps got in touch with Kenyon and informed him of his conversation with Connell. Phelps suggested to Kenyon that he confer with Thomas E. Dempsey, attorney for the petitioners and for the three corporations, and have him work out some plan by which the requirements of Chevrolet could be met. Kenyon discussed the matter with Dempsey. In the course of their discussions the possibility of Kenyon personally purchasing all of the stock of the three corporations owned by the Trust was considered. This possibility was deemed not feasible because Kenyon did not have the money to make the purchase. Kenyon did not want the stock held by the Trust sold to someone other than himself because he was desirous of maintaining his relative

proportional voting interest and control in the dealerships. Kenyon and Dempsey also considered the possibility of eliminating the J. A. K. Co. ownership of stock by means of a liquidation. Dempsey recommended that this not be done during the year 1948 because it would cost about \$90,000 in taxes whereas if it were postponed until the Revenue Act of 1949 were passed the liquidation might be accomplished tax free.

After being advised of the attorney's recommendation against the liquidation of J. A. K. Co. in 1948, Phelps wrote the Zone Manager of Chevrolet at Oakland, California, on October 16, 1948, stating, among other things, the following:

* * * * *

As you know, the J. A. K. Co., which is a Nevada corporation owned by James A. Kenyon, now owns 30 per cent of the stock in Capitol Chevrolet Company, 30 per cent in Mid-Valley Chevrolet, and 20 per cent in Howell Chevrolet. Our attorney advises that if this J. A. K. Co. were to be liquidated at the present time, the tax situation is such that Mr. Kenyon and I would be subject to approximately \$90,000 in tax.

It would seem that if it were possible for you to permit us to postpone the change until the Revenue Act of 1949 passes both the House and the Senate it would be most helpful to us.

* * * * *

At the present time we are working on a way to buy out the Trust by the different corporations. We believe this can be handled because although it is

an irrevocable Trust, Mr. Kenyon has jurisdiction over the Trust until his daughter becomes of age.

* * * * *

Because of the complications, I would appreciate Chevrolet Motor Division giving us six months or a year to work out of the seeming difficulties with which we are faced at the present time.

In addition to writing the foregoing letter Phelps also discussed the matter with Connell, the Regional Manager, and asked him whether or not it would be satisfactory if the liquidation of J. A. K. Co. were delayed until the new law was passed, and it was agreed by Connell that some extension would be given.

Pursuant to a prior agreement between Kenyon and Phelps, any tax liability which would result from the liquidation of J. A. K. Co. was to be shared between them. This company was not liquidated in 1948 because of the income tax liabilities that would result from such liquidation and the possibility that they would be reduced by new tax legislation in 1949.

On November 1, 1948, concurrently with the delivery to the three corporations of the new Direct Dealer Selling Agreements for the year commencing on that date, each of the corporations received two letters from Chevrolet. In one of these letters each corporation was notified that its operations were unsatisfactory in that all or a part of the ownership in the dealership was held by a trust and in the other that its operations were unsatisfac-

tory in that all or a part of the ownership in the dealership was held by a holding company. Each letter stated that "it is the desire and policy of Chevrolet Motor Division that all ownership of the Chevrolet dealership be held directly by individuals approved by Chevrolet Motor Division" and that the new Chevrolet Selling Agreement was being delivered "upon the express representation by you that action will be taken to effect the foregoing objective not later than" a specified date. The date specified for elimination of ownership of stock by the Trust was April 30, 1949, and by the holding company September 30, 1949. The probable consequence of failure to take the action required to satisfy the stock ownership policy would be that each corporation would receive a letter from Chevrolet stating that a new Selling Agreement would not be offered upon the expiration of the November 1, 1948 agreement because of noncompliance with its policy.

Dempsey formulated a plan for eliminating the trust as a stockholder of each corporation and it was presented at meetings of their boards of directors held in his office on December 21, 1948, and approved. The plan had two separate steps:

- (1) The purchase by each of the three corporations of a certain number of shares in such corporation from the trust, as well as the purchase by each of these corporations of a sufficient number of shares from the other stockholders (except J. A. K. Co.) so that the Phelps-Kenyon control in Capitol Chevrolet Co. and Mid-Valley Chevrolet Co.

would remain at 50 per cent each and the Phelps-Kenyon-Howell control in Howell Chevrolet Co. would remain at 33-1/3 per cent each; and

(2) The purchase by James A. Kenyon, personally, of the remaining shares owned by the Trust in each of the three corporations which were not to be purchased in Step (1).

The second step in the plan was expressly conditioned on the ability of Kenyon to secure the authorization of the Superior Court of the State of California of his purchase of the stock from the Trust; and, as an alternative to be used in the event the Court should fail to authorize such purchase, the plan provided that the three corporations would, respectively, purchase the remaining shares owned by the Trust and that Kenyon would purchase the same number of shares from the other stockholders of each corporation, in such manner as to preserve the same percentage of control.

At the meetings held on December 21, 1948, the directors of each corporation adopted the following resolution:

Whereas the purchase and redemption of stock according to the plan hereinabove set forth will reduce the corporation's working capital below its minimum requirements;

Now, Therefore, Be It Resolved that the officers of this corporation be and they hereby are authorized and directed to borrow, in behalf of this corporation, from such banks or trust companies as they may in their judgment determine, an amount not exceeding \$200,000, for such period of time and

upon such terms and rate of interest as may to them in their discretion seem advisable and to execute notes in respect thereto in the name of the corporation for the payment of the amount so borrowed.

Step (1) of the plan was executed on December 21, 1948, with the result that on that date the three corporations made distributions to stockholders in redemption of shares of stock, as follows:

Capitol Chevrolet Co.

Shareholder	Amt. Distributed	Shares Redeemed
F. Norman Phelps	\$ 37,759.15	65
Alice Phelps	37,759.15	65
Patricia May Kenyon Trust.....	75,518.30	130

Mid-Valley Chevrolet Co.

F. Norman Phelps	\$ 37,170.25	65
Alice Phelps	37,170.25	65
Patricia May Kenyon Trust.....	74,340.50	130

Howell Chevrolet Co.

F. Norman Phelps	\$ 23,254.00	50
Alice Phelps	23,254.00	50
Patricia May Kenyon Trust.....	46,508.00	100
Jackson Howell	46,508.00	100

Prior to December 21, 1948, Dempsey sent Phelps copies of proposed minutes of the directors' meetings which he had prepared. Before receiving these minutes Phelps was aware of the nature of the plan which was to be submitted to the directors, but its details had not theretofore been presented to him in writing. Howell was not present at the December 21, 1948 meeting of the directors of the Howell Chevrolet Company and had no knowledge of the

details of the plan until after it was adopted. Neither Phelps and his wife nor Howell needed the money distributed to them in redemption of their stock.

The shares of stock redeemed by the corporations were cancelled and the stated capital reduced accordingly. The operations of the corporations were not curtailed as a result of the redemptions, and they did not enter into any program of liquidation.

The stock ownership in Mid-Valley Chevrolet Co. and Capitol Chevrolet Co. immediately before and after the redemptions was as follows:

	Before—50%	After—50%
F. Norman Phelps	213 shares 25%	148 shares 25%
Alice Phelps	212 shares 25%	147 shares 25%

	Before—50%	After—50%
J. A. Kenyon, Trustee	170 shares 20%	40 shares 7%
J. A. Kenyon Company	255 shares 30%	255 shares 43%

The stock ownership in Howell Chevrolet Co. immediately before and after the redemptions was as follows:

	Before—33 $\frac{1}{3}$ %	After—33 $\frac{1}{3}$ %
F. Norman Phelps	150 shs. 16 $\frac{2}{3}$ %	100 shs. 16 $\frac{2}{3}$ %
Alice Phelps	150 shs. 16 $\frac{2}{3}$ %	100 shs. 16 $\frac{2}{3}$ %

	Before—33 $\frac{1}{3}$ %	After—33 $\frac{1}{3}$ %
J. A. Kenyon, Trustee	120 shs. 13 $\frac{1}{3}$ %	20 shs. 3 $\frac{1}{3}$ %
J. A. Kenyon Company	180 shs. 20%	180 shs. 30%

	Before—33 $\frac{1}{3}$ %	After—33 $\frac{1}{3}$ %
Jackson Howell	300 shs. 33 $\frac{1}{3}$ %	200 shs. 33 $\frac{1}{3}$ %

In the redemptions, the price paid per share in each of the corporations was as follows:

Mid-Valley Chevrolet Co.....	\$571.85
Capitol Chevrolet Co.	580.91
Howell Chevrolet Co.	465.08

The total amounts actually distributed by each corporation through the distributions in issue were as follows:

Mid-Valley Chevrolet Co.	\$148,681.00
Capitol Chevrolet Co.	151,036.60
Howell Chevrolet Co.	139,524.00

If the corporations had purchased all the shares of the trust without redeeming shares of the other stockholders, only the following amounts would have been required:

Mid-Valley Chevrolet Co.	\$97,214.50
Capitol Chevrolet Co.	98,747.70
Howell Chevrolet Co.	55,809.60

If only the shares of the trust had been redeemed by the three corporations, their capital would not have fallen below the capital standard requirements set by Chevrolet.

Because of the fact that the shares of other stockholders were redeemed along with the trust shares, the capital of the corporations fell below the standards set by Chevrolet. The additional cash distributions to the other stockholders placed a hardship on the corporations by requiring them to borrow funds. Failure to meet the capital standard requirements is reason for termination of a dealer's franchise.

The 1948 redemptions did not eliminate either the trust or the holding company as stockholders of the three corporations.

At the time of the 1948 distributions, the accumulated earnings and profits of each of the corporations were in excess of the total amount dis-

tributed to the shareholders. Earned surplus and undivided profits of each of the corporations as of December 31, 1948 after the distributions had been made, were as follows:

Mid-Valley Chevrolet Co.	\$275,536.12
Capitol Chevrolet Co.	285,666.90
Howell Chevrolet Co.	223,970.73

No dividends were ever declared or paid by any of the three corporations.

The consummation of Step (2) of the plan was commenced on June 1, 1949, by the filing by Kenyon, as Trustee of the Patricia May Kenyon Trust, of a petition to the Superior Court of the State of California, in and for the County of Los Angeles, for an order to sell the remaining trust stock in the three corporations to himself as an individual. Proceedings in this action were continued until July, 1950, when the need for the order prayed for in the petition disappeared by reason of the sales of the remaining Trust stock in Capitol Chevrolet Co. and Howell Chevrolet Co. to those corporations, respectively, and by the liquidation of Mid-Valley Chevrolet Co.

During the year 1950 and prior to July 26, 1950, J. A. K. Co. was completely liquidated and all of the stock held by it in each of the three corporations was distributed to Kenyon.

On July 26, 1950, Capitol Chevrolet Co. purchased from Kenyon the 255 shares of its stock then owned by him and also purchased from the Trust the 40 shares of its stock owned by the Trust. Howell Chevrolet Co. purchased from Kenyon the

180 shares of its stock then owned by him and also purchased from the Trust the 20 shares of its stock owned by the Trust; and Mid-Valley Chevrolet Co. purchased from Phelps the 148 shares of its stock then owned by him, and from Alice Phelps the 147 shares of its stock then owned by her. Thereafter during the year 1950 Mid-Valley Chevrolet Co. was completely liquidated and dissolved and all of its assets transferred to its stockholders.

Chevrolet did not object to the changes in the proportionate ownership and control of the three dealerships made during the year 1950.

The distributions to the trust in redemption of stock of the three corporations on December 21, 1948, were not made at such time and in such manner that they were essentially equivalent to distributions of taxable dividends.

The distributions to the other stockholders on December 21, 1948, were made at such time and in such manner that they were essentially equivalent to distributions of taxable dividends.

Opinion

Raum, Judge: The distributions in this case resemble to a considerable extent those involved in *Carter Tiffany*, 16 T.C. 1443, and *James F. Boyle*, 14 T.C. 1382, affirmed, 187 F. 2d. 557 (C.A. 3), certiorari denied, 342 U.S. 817. Although the situations are not identical, they are sufficiently similar, in our judgment, to call for the same results.

We hold that the redemptions of the trust shares

did not constitute dividends under Section 115(g), Internal Revenue Code of 1939. Not only did these transactions sharply reduce the fractional interest of the trust in each of the corporations, but they represented a first step in an integrated plan to eliminate the trust completely as a stockholder. As to the trust, therefore, we think it plain that the distributions represented in substance as well as in form merely the purchase price for the shares, and not the payment of a taxable dividend. Cf. *Carter Tiffany*, *supra*; *Zenz vs. Quinlivan*, 213 F.2d 914 (C.A. 6).

However, as in the *Boyle* case, which presented other distributions by the same corporation involved in the *Carter Tiffany* case, we think that the distributions to the *Howell* and *Phelps* interests herein do fall within Section 115(g) as taxable dividends. The plan was so formulated and executed that the stockholders in question emerged with the identical fractional interests in the corporation which they had owned before; the distributions were not in partial liquidation of the corporations, and the operations of the businesses were in no way curtailed. In substance the distributions simply transferred to these stockholders accumulated earnings and profits of their corporations. It is no answer to say that these transactions had their origin in the demand of *Chevrolet* that the trust be eliminated as a stockholder. That objective could have been achieved, and indeed with less strain upon the corporations, merely by redeeming the shares of the trust. However, *Kenyon*

did not wish to have his control diluted, and Connell, the regional manager for Chevrolet, had himself suggested to Phelps that it would be fair to preserve the same ratios of control. But that suggestion did not represent Chevrolet policy, and we do not believe, on the evidence, that Phelps regarded it as such.¹ It was an objective that the parties themselves would undoubtedly have desired to attain, wholly apart from any suggestion emanating from Connell. Certainly, petitioners, who have the burden of proof, have not shown otherwise. The preservation of the same ratios of control, far from being a factor inconsistent with the application of Section 115(g), is in our judgment a consideration that tends rather to fortify the applicability of those provisions. For, in substance, the aim of the parties was to pay out corporate funds to stockholders in such manner that the distributions were in proportion to control and at the same time leave the distributees with the same fractional interests in the corporations. We find and hold that the distributions to the Phelps and Howell interests were made "at such time and in such manner as to make the distribution[s] * * * essentially equivalent" to the distribution of taxable dividends. Section 115(g).

Decision will be entered under Rule 50 in Docket

¹ In reaching this conclusion we do not rely upon the testimony given by Connell in his deposition, objected to by petitioners, that Phelps understood the suggestion as being his [Connell's] "rather than General Motor's suggestion or policy".

51216; decision for the petitioner in Docket 51265,
and decision for the respondent in Docket 51282.

Served and Entered July 19, 1956.

The Tax Court of the United States
Washington

Docket No. 51282

F. NORMAN PHELPS and ALICE PHELPS,
Petitioners,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

DECISION

Pursuant to the determination of the Court, as
set forth in its Findings of Fact and Opinion, filed
July 19, 1956, it is

Ordered and Decided: That there is a deficiency
in income tax for the year 1948 in the amount of
\$107,926.06.

Entered: July 31, 1956.

[Seal] /s/ ARNOLD RAUM,
Judge

Served and Entered August 1, 1956.

In the United States Court of Appeals
for the Ninth Circuit

Tax Court Docket No. 51282

F. NORMAN PHELPS and ALICE PHELPS,
Petitioners,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

PETITION FOR REVIEW

Taxpayers, the petitioners in this cause, by Wellman P. Thayer, counsel, hereby file their petition for a review by the Circuit Court of Appeals for the Ninth Circuit of the decision by The Tax Court of the United States rendered on July 31, 1956, 26 T.C. . ., No. 105, determining a deficiency in the petitioners' Federal income taxes for the calendar year 1948 in the amount of \$107,926.06 and respectively show:

I.

The petitioners, F. Norman Phelps and Alice Phelps, are husband and wife residing in Piedmont, California. They filed a joint return for the year 1948 with the Collector of Internal Revenue for the Sixth Collection District of California whose office was within the Ninth Judicial Circuit.

II.

Nature of the Controversy

The controversy involves the proper determina-

tion of the petitioners' joint liability for Federal income taxes for the calendar year 1948.

In the year 1948 petitioners were the owners of 50% of the outstanding capital stock of each of two corporations, Capitol Chevrolet Co. and Mid-Valley Chevrolet Co. The other 50% of the outstanding capital stock of each of said two corporations was owned in part by J. A. K. Co., a corporation and in part by the Patricia May Kenyon Trust. James A. Kenyon was the owner of all of the outstanding capital stock of J. A. K. Co. and was the trustee of the Patricia May Kenyon Trust. By reason of his ownership of all of the stock in J. A. K. Co. and his position as trustee of the Patricia May Kenyon Trust control of James A. Kenyon over the affairs of each of said two corporations was equal to the control of petitioners over the affairs of such two corporations.

In the year 1948 petitioners were the owners of one-third of the outstanding capital stock of Howell Chevrolet Co. One-third of the stock of that corporation was owned by Jackson Howell and the remaining one-third was owned in part by J. A. K. Co. and in part by the Patricia May Kenyon Trust. By reason of his ownership of all of the stock in J. A. K. Co. and his position as trustee of the Patricia May Kenyon Trust the control of James A. Kenyon over the affairs of Howell Chevrolet Co. was equal to the control of petitioners and said Howell over the affairs of that corporation.

Capitol Chevrolet Co., Mill-Valley Chevrolet Co. and Howell Chevrolet Co. were each engaged in the

business of operating a Chevrolet dealership under a separate agreement with Chevrolet Motor Division of General Motors Corporation.

In the year 1948 Chevrolet Motor Division of General Motors Corporation adopted a new policy to the effect that no trust could own any stock in a dealership corporation and in that year demand was made upon each of the above named corporations that the Patricia May Kenyon Trust be removed from the ownership of stock in each of the three corporations.

The adoption of this new policy by Chevrolet Motor Division was brought to the attention of the three corporations by C. F. Connell, the Regional Sales Manager of Chevrolet Motor Division having jurisdiction over the three corporations. Mr. Connell, acting in his official capacity as Regional Sales Manager, advised petitioner F. Norman Phelps, in his capacity as an officer of the three corporations, that the demand of Chevrolet Motor Division would have to be complied with and suggested that the removal of the trust from ownership of stock in the three corporations be accomplished in such a manner that the proportionate controls of petitioners and Kenyon in Capitol Chevrolet Co. and Mid-Valley Chevrolet Co. and the proportionate controls of petitioners, Kenyon and Howell in Howell Chevrolet Co. be not disturbed.

On December 21, 1948, as the first step in compliance with Chevrolet Motor Division's demand that the Patricia May Kenyon Trust be removed from ownership of stock in the three corporations

and in compliance with the suggestion of the Regional Manager that such removal be accomplished in such a manner as to leave the proportionate control of James A. Kenyon in each of the three companies undisturbed, Capitol Chevrolet Co. and Mid-Valley Chevrolet Co. each purchased and redeemed 130 of the shares owned by the Patricia May Kenyon Trust and a like number of shares owned by petitioners, and Howell Chevrolet Co. redeemed 100 of the Trust shares and a like number of shares owned by petitioners and Jackson Howell.

Capitol Chevrolet Co. paid petitioners the sum of \$75,518.30 for the shares which were so purchased and redeemed by it, Mid-Valley Chevrolet Co. paid petitioners the sum of \$74,340.50 for the shares which were so purchased and redeemed by it and Howell Chevrolet Co. paid petitioners the sum of \$46,508.00 for the shares which were so purchased and redeemed by it.

On their joint return for the year 1948 petitioners reported the amount so received by them from each of the three corporations as an amount received upon the sale of shares in such corporation and paid tax thereon accordingly.

The Commissioner of Internal Revenue determined that the amount received by petitioners from each of the said three corporations constituted an ordinary dividend.

III.

Petitioners, being aggrieved by the Findings of Fact and Conclusions of Law contained in the Findings and Opinion of the Court and by its Decision

entered pursuant thereto, desire to obtain a review thereof by the United States Court of Appeals for the Ninth Circuit.

IV.

Assignments of Error

Petitioners assign as error the following acts and omissions of The Tax Court of the United States:

1. The finding that the distributions made by the three corporations, Capitol Chevrolet Co., Mid-Valley Chevrolet Co. and Howell Chevrolet Co., to petitioners on December 21, 1948 were made at such time and in such manner as to be essentially equivalent to distributions of taxable dividends.

2. The finding that there is a deficiency in petitioners' Federal income taxes for the year 1948 in the amount of \$107,926.06.

3. The finding that the redemptions of the stock made by the three corporations, Capitol Chevrolet Co., Mid-Valley Chevrolet Co. and Howell Chevrolet Co., on December 21, 1948 caused the capital of said corporations to fall below the standards set by Chevrolet Motor Division of General Motors Corporation.

4. The failure to find that the redemption of petitioners' stock in each of the three corporations, Capitol Chevrolet Co., Mid-Valley Chevrolet Co. and Howell Chevrolet Co., on December 21, 1948 was not made at such a time or in such a manner as to be substantially equivalent to a taxable dividend.

5. The failure to find that the amount received by petitioners from each of the three corporations,

Capitol Chevrolet Co., Mid-Valley Chevrolet Co. and Howell Chevrolet Co., in the year 1948 constituted an amount received in exchange for such corporations' shares.

/s/ W. P. THAYER,

Counsel for Petitioners

Duly Verified.

[Endorsed]: T.C.U.S. Filed October 25, 1956.

[Title of U. S. Court of Appeals and Cause.]

NOTICE OF FILING

To John P. Barnes, Esq., Chief Counsel, Bureau of Internal Revenue, Washington, D. C.

You are hereby notified that the petitioners on the 25th day of October 1956 filed with the Clerk of The Tax Court of the United States at Washington, D. C., a Petition for Review by the United States Circuit Court of Appeals for the Ninth Circuit of the decision of The Tax Court of the United States heretofore rendered in the above entitled cause.

A copy of the Petition for Review and the Assignment of Error as filed is hereto attached and served upon you.

Dated: October 25, 1956.

DEMPSEY, THAYER, DEIBERT
& KUMLER,

By WELLMAN P. THAYER,

Attorneys for the Petitioners

Acknowledgment of Service attached.

[Endorsed]: T.C.U.S. Filed October 31, 1956.

[Title of Tax Court and Cause.]

CERTIFICATE

I, Howard P. Locke, Clerk of The Tax Court of the United States, do hereby certify that the foregoing documents, 1 to 14, inclusive, constitute and are all of the original papers on file in my office as called for by the "Designation of Contents of Record on Review", and the "Designation of Additional Portions of Record", including exhibits 1-A through 23-X attached to the stipulation of facts and exhibit 24 attached to the deposition of F. Norman Phelps, in the case before the Tax Court of the United States docketed at the above number and in which the petitioners in the Tax Court have initiated an appeal as above numbered and entitled, together with a true copy of the docket entries in said Tax Court case, as the same appear in the official docket book in my office.

In testimony whereof, I hereunto set my hand and affix the seal of the Tax Court of the United States, at Washington, in the District of Columbia, this 20th day of November, 1956.

[Seal] /s/ HOWARD P. LOCKE,
Clerk Tax Court of the United
States

[Title of Tax Court and Cause.]

STIPULATION TO TAKE DEPOSITION

It Is Hereby Stipulated and Agreed by and between the parties hereto by their respective counsel of record that the testimony of F. Norman Phelps, a witness on the part of the petitioners, whose address is 66 Hampton Road, Piedmont, California, be taken at 9:00 a.m. o'clock on August 11, 1955 at 1104 Pacific Mutual Building, 523 West 6th Street, Los Angeles 14, California, before Helen D. Wilson, a notary public in and for the County of Los Angeles, State of California, and that if said deposition is not completed on said day it will be continued from time to time thereafter until completed; that said deposition and testimony, when taken, may be read and used in evidence in said cause on any trial thereof or in any proceeding therein, subject to the same objections and exceptions as if said witness were personally present, but without objection or exception to the time, place and manner of taking the same, or to the form of the questions, unless noted at the time.

/s/ WELLMAN P. THAYER,
Counsel for Petitioners, F. Norman Phelps, Alice
Phelps and James A. Kenyon Trust, James A.
Kenyon, Trustee.

/s/ CAMERON B. AIKENS,
Counsel for Petitioners, Jackson Howell and Vir-
ginia Howell.

/s/ JOHN POTTS BARNES, REM
Chief Counsel, Internal Revenue Service, Counsel
for Respondent.

[Title of Tax Court and Cause.]

DEPOSITION OF F. NORMAN PHELPS

Room 1104, Pacific Mutual Building, 523 West
Sixth Street, Los Angeles 14, California, Thursday,
August 11, 1955.

Testimony for Petitioners

The parties met, pursuant to Stipulation, at 9:00
a.m. at the above time and place.

Present: Wellman P. Thayer, Esq., of Dempsey,
Thayer, Deibert & Kumler, 523 West Sixth Street,
Los Angeles 14, California, for Petitioners F. Nor-
man Phelps and Alice Phelps and the James A.
Kenyon Trust. Cameron B. Aikens, Esq., of Getz,
Aikens & Manning, 6435 Wilshire Boulevard, Los
Angeles 48, California, for Petitioners Jackson
Howell and Virginia Howell. Mark Townsend, Esq.,
(Hon. John Potts Barnes, Esq., Chief Counsel, In-
ternal Revenue Service) 1135 Subway Terminal
Building, Los Angeles, California, for the Com-
missioner. [2*]

* Page numbers appearing at top of page of original Reporter's
Transcript of Record.

Proceedings

F. NORMAN PHELPS

called as a witness for and on behalf of the Petitioners, having been first duly sworn, was examined and testified as follows:

Direct Examination

Q. (By Mr. Thayer): Will you state your name, please? A. F. Norman Phelps.

Q. Are you one of the petitioners in this proceeding? A. I am.

Q. What is your occupation?

A. At the present time I am President of Capitol Chevrolet Co. in Sacramento.

Q. What is Capitol Chevrolet Co.? What is its business?

A. It has a franchise from Chevrolet Motor Division to sell Chevrolet cars at retail.

Q. What was your occupation during the year 1948?

A. I was President of Capitol Chevrolet Co. I was President of Mid-Valley Chevrolet Co., and Vice President of Howell Chevrolet Co.

Q. Have you ever been employed by Chevrolet Motor Division of General Motors Corporation?

A. Yes. [4]

Q. During what period were you employed by Chevrolet Motor Division?

A. Since 1921 to 1946.

Q. What were your duties during your period of employment?

A. Retail salesman, used car manager for Chev-

(Deposition of F. Norman Phelps.)

rolet Motor Division, Sales Manager, District Manager, Office Manager, car distributor, Assistant Zone Manager, City Sales Manager, Zone Manager, Assistant Regional Manager, and Regional Manager of the Pacific Coast Region until 1946.

Q. What area did the Pacific Coast Region cover?

A. The Pacific Coast Region covered the West Coast. It covers the State of Washington, the State of Oregon, the State of California, the State of Idaho, the State of Nevada, the State of Utah, part of Montana, part of Wyoming, and part of Arizona. That comprises the Pacific Coast Region.

Q. What are the duties of a Regional Manager of Chevrolet Motor Division?

A. The duties of Regional Manager of Chevrolet Motor Division are to carry out directives from the central office, hold meetings with zone managers, set policies, develop programs for the benefit of Chevrolet Motor Division and its dealer organizations.

Q. During the period in which you were Regional Manager for the Pacific Coast Region, what was the chain of command [5] within the Sales Department of Chevrolet Motor Division from the General Sales Manager to the dealer?

A. The chain of command would be in Chevrolet Motor Division from the General Manager to the General Sales Manager, from the General Sales Manager to Assistant General Sales Manager in the Eastern half of the United States and the Western half of the United States. Then from the Assistant

(Deposition of F. Norman Phelps.)

General Sales Manager to the Regional Managers in the nation. Does that answer your question?

Q. During the period in which you were Regional Manager, did you ever have occasion to relay directives from the General Sales Manager to the various dealers?

A. Many times. Yes, I did.

Q. What procedure did you follow in relaying such directives?

A. You usually would work through the Zone Manager. Sometimes you would handle the directive directly with the dealer, but in the majority of the instances it would be handled through the regular procedure which would be Zone Manager, Assistant Zone Manager, District Manager to dealers.

Q. Do you remember whether in the year 1948 that same procedure was in effect?

A. It was.

Q. During the year 1948 within what Division was the dealership known as Capitol Chevrolet Co., within what [6] region?

A. Pacific Coast Region.

Q. And within what zone?

A. It is Oakland Zone.

Q. And within what region and zones were the Mid-Valley and Howell Chevrolet Co.?

A. Mid-Valley and Howell were in the Pacific Coast Region and in an area known as the Los Angeles Zone.

Q. The three, then, were within the Western Region?

A. In the Pacific Coast Region.

(Deposition of F. Norman Phelps.)

Q. In 1948 who was in charge of the Pacific Coast Region? A. J. L. Connell.

Q. During the year 1948 who was the Zone Manager of the Oakland Zone?

A. A. W. Strang.

Q. During the year 1948, who was the Zone Manager of the Los Angeles Zone?

A. Joe Steele.

Q. Was Mr. Steele the Zone Manager during the entire year?

A. No. Mr. Culbertson was the early part of the year, and Mr. Steele the latter part of the year.

Q. Mr. Phelps, I show you a document entitled "Direct Dealer Selling Agreement, Chevrolet Motor Division, General [7] Motors Corporation," and will ask you if the signature of F. Norman Phelps appearing thereon is your own? A. It is.

Q. What is the nature of that document?

A. Well, this is a selling agreement that is given to the dealer which enables him to handle the ensuing year.

Q. And the date of the document?

A. Date November 1, 1948.

Q. And what period would that selling agreement cover?

A. It would be from November 1 of 1948 to November 1, or a few days one way or the other, of 1949, because they are not always given at a certain date.

Mr. Thayer: I now offer this document in evidence as Petitioners' Exhibit No. 24.

Mr. Townsend: May I ask a preliminary ques-

(Deposition of F. Norman Phelps.)

tion here? This was the contract that was in effect from the period 1948 to 1949?

The Witness: That is right.

Mr. Townsend: No objection.

(The document above referred to was marked Petitioners' Exhibit No. 24 for identification and received in evidence.)

[See pages 110-133.]

Q. (By Mr. Thayer): On or about November 1, 1948, did you execute a similar agreement on behalf of Mid-Valley Chevrolet Co.?

A. I did.

Q. On or about November 1, 1948 did you execute a similar document on behalf of Howell Chevrolet Co.? [8] A. I did.

Q. Were the documents which you executed on behalf of Mid-Valley Chevrolet Co. and Howell Chevrolet Co. identical in all respects with Petitioners' Exhibit No. 24? A. They were.

Q. In all respects?

A. In all respects with the exception of perhaps the documents were the same, but the signatures and maybe Paragraph 3 was different.

Q. You say "maybe Paragraph 3." Would you look at Paragraph 3 and tell me whether that would have been changed in the other two?

A. This is Capitol. That is of Norman Phelps and James A. Kenyon. In Howell it would be Jackson Howell, F. Norman Phelps, James A. Kenyon. In Mid-Valley it would be F. Norman Phelps, James A. Kenyon and Joe Carpenter.

Q. I hand you a photostatic copy of a letter

(Deposition of F. Norman Phelps.)

dated November 1, 1948 addressed to Capitol Chevrolet Co. and signed by A. W. Strang, Zone Manager. I will ask you if that document was received by Capitol Chevrolet on or about the date it bears?

A. It was.

Q. And was that document related in any manner to Petitioners' Exhibit No. 24, the Direct Dealer Selling Agreement? [9]

A. It was part of it.

Mr. Thayer: I now offer this in evidence as Petitioners' Exhibit No. 25.

Mr. Townsend: May I ask what is the purpose of the offering?

Mr. Thayer: The two documents taken together and a third document, which will follow, constitute the total agreement between Chevrolet Motor Division and the dealer.

Mr. Townsend: No objection.

(The document above referred to was marked Petitioners' Exhibit No. 25 for identification and received in evidence.)

[See page 133.]

Q. (By Mr. Thayer): Referring to Petitioners' Exhibit No. 25, Mr. Phelps, I call your attention to the first paragraph which states as follows: "Please take notice that the Capital Standard Agreement dated 8-15-47 heretofore executed by you shall continue in full force and effect and shall constitute a part of the new Chevrolet Selling Agreement entered into with you on that date provided——" I hand you the photostatic copy of a document entitled General Motors Dealer's Capital

(Deposition of F. Norman Phelps.)

Standard Program, Capital Standard Agreement with Capitol Chevrolet Co., and will ask you if this is the same Capital Standard Agreement dated August 15, 1947 which is referred to in Petitioners' Exhibit 25? A. It is.

Mr. Thayer: I now offer this in evidence as Petitioners' Exhibit No. 26. [10]

Mr. Townsend: No objection.

(The document above referred to was marked Petitioners' Exhibit No. 26 for identification and was received in evidence.)

[See pages 136-141.]

Q. (By Mr. Thayer): Do you know of your own knowledge whether or not, during the year 1948, Mid-Valley Chevrolet Co. and Howell Chevrolet Co. were parties to similar Capital Standard Agreements with Chevrolet Motor Divisions?

A. They were.

Q. And were the printed portions of the Mid-Valley and Howell Capital Standard Agreements identical with the printed portions of Petitioners' Exhibit 26? A. They were.

Q. I show you a photostatic copy of a letter from Chevrolet Motor Division addressed to Capitol Chevrolet Co. dated November 1, 1948 signed by A. W. Strang, Zone Manager, and will ask you if Capitol Chevrolet Co. received that letter on or about the date it bears?

A. I received this letter.

Mr. Townsend: May I see that?

Mr. Thayer: That is the first of six letters. I

(Deposition of F. Norman Phelps.)

offer this letter in evidence as Petitioners' Exhibit 27.

Mr. Townsend: May I ask the purpose of this offer?

Mr. Thayer: The purpose of the offer is to [11] establish the reason for the action later taken during the year 1948 by Capitol Chevrolet Co. to remove the Patricia May Kenyon Trust from ownership of stock in this corporation.

Mr. Townsend: It is not offered to prove the facts contained in the letter, then?

Mr. Thayer: It is not offered to prove any fact contained within the letter.

Mr. Townsend: No objection.

(The document above referred to was marked Petitioners' Exhibit No. 27 for identification and was received in evidence.)

[See page 143.]

Q. (By Mr. Thayer): I show you another letter from Chevrolet Motor Division to Capitol Chevrolet Co. dated November 1, 1948 signed by A. W. Strang and will ask you if Capitol Chevrolet Co. received that letter on or about the date it bears?

A. I did.

Mr. Thayer: I offer this letter in evidence.

Mr. Townsend: Not offered to prove the facts therein?

Mr. Thayer: It is Petitioners' Exhibit No. 28.

(The document above referred to was marked Petitioners' Exhibit No. 28 for identification and was received in evidence.)

[See page 144.]

(Deposition of F. Norman Phelps.)

Q. (By Mr. Thayer): I show you a photostatic copy of a letter from [12] Chevrolet Motor Division addressed to Mid-Valley Chevrolet Co. dated November 1, 1948 signed by J. W. Steele, Zone Manager, and will ask you if Mid-Valley Chevrolet Co. received that letter on or about the date it bears?

A. They did.

Mr. Thayer: I offer this letter in evidence as Petitioners' Exhibit No. 29.

Mr. Townsend: That is the Trust?

Mr. Thayer: That is the Trust, Mid-Valley.

Mr. Townsend: Offered for the same purpose?

Mr. Thayer: Yes.

Mr. Townsend: No objection.

(The document above referred to was marked Petitioners' Exhibit No. 29 for identification and was received in evidence.)

[See page 146.]

Q. (By Mr. Thayer): I show you a letter from Chevrolet Motor Division addressed to Mid-Valley Chevrolet Co. dated November 1, 1948 and signed by J. W. Steele, Zone Manager, and will ask you if Mid-Valley Chevrolet Co. received this letter on or about the date it bears.

A. They did.

Mr. Thayer: I offer this letter in evidence as Petitioners' Exhibit No. 30.

Mr. Townsend: For the same purpose? [13]

Mr. Thayer: Same purpose.

Mr. Townsend: No objection.

(Deposition of F. Norman Phelps.)

(The document above referred to was marked Petitioners' Exhibit No. 30 for identification and was received in evidence.)

[See page 148.]

Q. (By Mr. Thayer): I show you a letter from Chevrolet Motor Division to Howell Chevrolet Co. dated November 1, 1948 signed by J. W. Steele, Zone Manager, and will ask you if that letter was received by Howell Chevrolet Co. on or about the date it bears? A. It was.

Mr. Thayer: I offer this in evidence as Petitioners' Exhibit 31.

Mr. Townsend: Same purpose?

Mr. Thayer: Same purpose.

Mr. Townsend: No objection.

(The document above referred to was marked Petitioners' Exhibit No. 31 for identification and was received in evidence.)

[See page 150.]

Q. (By Mr. Thayer): I show you a letter from Chevrolet Motor Division addressed to Howell Chevrolet Co. dated November 1, 1948 and signed by J. W. Steele, Zone Manager, and will ask you if this letter was received by Howell Chevrolet Co. on or about the date it bears? [14]

A. It was.

Mr. Thayer: I offer this letter in evidence as Petitioners' Exhibit No. 32.

Mr. Townsend: Same purpose?

Mr. Thayer: Same purpose.

Mr. Townsend: No objection.

(Deposition of F. Norman Phelps.)

(The document above referred to was marked Petitioners' Exhibit No. 32 for identification and was received in evidence.)

[See page 152.]

Q. (By Mr. Thayer): Mr. Phelps, referring to Petitioners' Exhibits Nos. 27 through 32, both inclusive, will you please relate the circumstances under which those letters were received by the three corporations named therein?

A. Well, they were just—they were received saying that they wanted to get the Trust out. Then they wanted to get the holding company out.

Q. Were they received by the corporations concurrently with the delivery to the corporations of the new dealership agreements?

A. No. As I remember, they talked to me about this before.

Q. Well, referring to the letters themselves. In each of them the opening paragraph begins as follows: "In delivering to you herewith new Chevrolet Selling Agreement to be [15] effective for the term commencing November 1, 1948,"——

A. What I mean to say is that when you sign the contract, they talk to you about certain things, so they talked to me about this and whether it came that day or the next day, I really don't remember; but we got it at the time, but I knew about it at the time we signed the contract. Does that answer your question?

Q. Well, I wish to find out whether or not these letters were delivered to the companies concur-

(Deposition of F. Norman Phelps.)

rently with the delivery of the selling agreements.

A. Oh, yes.

Q. Referring again to the first paragraph of each of these letters which states in full as follows in the case of Petitioners' Exhibit No. 32, "In delivering to you herewith new Chevrolet Selling Agreement to be effective for the term commencing November 1, 1948, we direct your attention to the fact that our action is not to be regarded as evidence of satisfaction on our part with the operation of your dealership as to financial set-up within the requirements of Paragraph 15 thereof. On the contrary, your operation is unsatisfactory in that all or part of the ownership of the dealership is held in effect by a holding company."

I also call your attention to the first paragraph of Petitioners' Exhibit No. 31 which is identical with the last quoted paragraph except for the final words in the sentence [16] referring to the fact that a part of the ownership of the dealership is held by a trust and will ask you if these letters constituted the first notice which these companies had had of dissatisfaction on the part of Chevrolet Motor Division of the operation of the companies because of the fact that a part of the stock of each of the companies was held by a Trust and by a holding company?

A. They were not the first. I had a call from Mr. Connell, Regional Manager of Chevrolet Motor Division. He asked me to come to his office, which I did, and he informed me of a new policy Chevrolet Motor Division had in which they would not

(Deposition of F. Norman Phelps.)

allow any trust or any holding company to have any part of a Chevrolet franchise. He informed me at that time that steps should be taken by us to eliminate the Trust and the holding company.

He further stated that we should leave the stockholdings in exactly the same proportion as they were. I informed Mr. Connell that I had been with Chevrolet long enough to know that if they requested that we take the holding company and the Trust out of the Chevrolet dealerships that they meant it, and we would do so immediately.

Q. Do you remember the approximate date of your first conversations with Mr. Connell on this subject?

A. I would say—no, I don't. It was approximately two months before we got the letter, I would say. [17]

Q. I show you a photostatic copy of what purports to be a carbon copy of a letter addressed to Mr. Gus Culbertson, Chevrolet Motor Division, Los Angeles, California, bearing a typed signature of F. Norman Phelps and will ask you where the carbon copy of this letter was found.

A. This is in my file.

Q. Do you recall writing that letter?

A. Yes, I do.

Q. Did you mail that letter to Mr. Culbertson?

A. Yes. It is the same type of letter that I sent to Mr. Strang.

Q. I offer this letter in evidence as Petitioners' Exhibit No. 33.

Mr. Townsend: No objection.

(Deposition of F. Norman Phelps.)

(The document above referred to was marked Petitioners' Exhibit No. 33 and received in evidence.)

[See page 153.]

Mr. Thayer: I show you a photostatic copy of what purports to be a carbon copy of a letter addressed to Mr. A. W. Strang, Chevrolet Motor Division, dated September 18, 1948 bearing the typed signature of F. Norman Phelps and will ask you where the carbon copy of that letter was found.

The Witness: This is the same letter. It was found in my files.

Q. (By Mr. Thayer): Do you recall writing this letter? [18] A. I did.

Q. And did you mail the letter to Mr. Strang?

A. I did.

Mr. Thayer: I offer this letter in evidence as Petitioners' Exhibit No. 34.

Mr. Townsend: No objection.

(The document above referred to was marked Petitioners' Exhibit No. 34 and received in evidence.)

[See page 154.]

Q. (By Mr. Thayer): I show you a photostatic copy of what purports to be a carbon copy of a letter addressed to Mr. A. W. Strang dated October 16, 1948 and bearing the typed signature of F. Norman Phelps and will ask you where the carbon copy of this letter was found. A. In my files.

Q. Do you recall writing the letter?

A. I do.

Q. And did you mail the letter?

(Deposition of F. Norman Phelps.)

A. I did.

Mr. Thayer: I offer this letter in evidence as Petitioners' Exhibit No. 35.

Mr. Townsend: The purpose for offering these letters is not to prove the facts stated therein, but that Mr. Phelps mailed these letters?

Mr. Thayer: That Mr. Phelps did take the action [19] indicated by these letters.

Mr. Townsend: No objection.

(The document referred to was marked Petitioners' Exhibit No. 35 and received in evidence.)

[See page 155.]

Q. (By Mr. Thayer): Referring to Petitioners' Exhibits Nos. 33, 34, and 35, I will ask you if these letters were written by you as the result of your conversation with Mr. Connell?

A. Mr. Connell. Also, Mr. Strang sent Mr. DeLong up to see me, and asked what we were going to do and how we were going to get the Trust and the holding company out. Note one of these letters refers to Mr. DeLong's visit.

Q. And did these letters reflect your intentions at the time? A. They did.

Q. Following your conversation with Mr. Connell, what steps did you take to comply with the wishes expressed by him in that conversation?

A. I got in touch with Mr. Kenyon who handled the financial end of our business who was located here in Los Angeles. Then I got in touch with Mr. Dempsey who was our attorney. Does that answer your question?

(Deposition of F. Norman Phelps.)

Q. Will you identify the Mr. Dempsey that you referred to, please?

A. Mr. Dempsey was our attorney, the senior partner of [20] Dempsey, Thayer, Deibert & Kumler.

Q. Mr. Thomas R. Dempsey? A. Yes.

Q. In your discussions with Mr. Kenyon concerning the manner in which you could comply with General Motor's wishes, as expressed by Mr. Connell, did you discuss various ways and means of complying with those wishes?

A. I told Mr. Kenyon that Mr. Connell informed me as to what we had to do, and I told Mr. Kenyon I thought that he should get in touch with Mr. Tom Dempsey and work out some plan that we could comply with. There were many plans that Mr. Dempsey came up with, but finally the only plan that was feasible was the one that we adopted.

Mr. Townsend: Respondent moves to strike the last part of that answer as a conclusion.

Q. (By Mr. Thayer): In your conversations with Mr. Kenyon, concerning the various methods by which General Motor's wishes as presented by Mr. Connell could be complied with, did you and Mr. Kenyon discuss the possibility of Mr. Kenyon personally purchasing all of the stock of the Trust and all of the stock of the holding company owned by the Trust and the holding company in each of these corporations?

A. I talked with Mr. Dempsey on that——

Mr. Townsend: Respondent objects. I believe

(Deposition of F. Norman Phelps.)

the [21] witness is about to go into hearsay testimony, and I object for that reason.

Mr. Thayer: Will you repeat the question?

(The question was read by the reporter.)

Mr. Townsend: Same objection.

Q. (By Mr. Thayer): Will you answer the question? A. Yes.

Q. Your answer is yes?

A. Yes, we discussed it, but nothing was formulated as far as we were concerned. That was all handled with the attorney. We discussed many plans as to how we could comply and what we would have to do to comply.

Q. Do you know of your own knowledge whether or not in the fall of 1948 Mr. Kenyon had sufficient funds to purchase all of the stock of the three corporations which were owned by his Trust and by the Patricia May Kenyon Trust and by his holding company?

Mr. Townsend: Respondent objects to the form of the question. That is leading.

The Witness: I know he didn't have the money. That was one of the things that we discussed over a period of many times and things he discussed with Mr. Dempsey. That was one of the reasons why we were so worried about the thing, because we couldn't comply with it immediately; with what Chevrolet [22] Motor Company wanted, because Mr. Kenyon didn't have the money to do it.

Q. (By Mr. Thayer): Is Mr. Thomas R. Dempsey still alive?

A. No. He died some time ago.

(Deposition of F. Norman Phelps.)

Q. Was a plan finally adopted by the three corporations to accomplish the removal of the Patricia May Kenyon Trust from the ownership of the stock in those corporations? A. It was.

Q. Were you aware of the nature of this plan before its adoption? A. I was.

Q. How did you learn of the details of the plan?

A. When Mr. Dempsey sent me the Minutes and also talked to me on the telephone.

Q. Do you know of your own knowledge who devised the plan which was finally adopted?

A. Mr. Dempsey.

Q. Was this plan at any time presented to you in writing other than in the Minutes of the proposed meetings of the Boards of Directors of the three corporations? A. It was not.

Q. Did the plan which was adopted by the Boards of Directors of the three corporations on December 21, 1948 result in all of the stock owned by the Trust being redeemed by [23] each of the three corporations?

A. Practically all. There was some small amount that was not redeemed. There was some difficulty that the attorney and Kenyon had but which did practically what Chevrolet Motor Company requested.

Q. Do you know what steps were proposed to be taken to eliminate the ownership by the Trust of the shares which were not redeemed by the corporations? A. No, I don't.

Q. My Phelps, do you know why the corpora-

(Deposition of F. Norman Phelps.)

tions did not redeem all of the stock owned by the Trust?

Mr. Townsend: Respondent objects. The proper foundation has not been laid for that question. I believe it may well call for hearsay testimony.

Q. (By Mr. Thayer): You have testified that you were President of Capitol Chevrolet Co., President of Mid-Valley Chevrolet Co. and Vice President of Howell Chevrolet Co., I believe?

A. That is right.

Q. Were you familiar with the financial status of each of those companies? A. I was.

Q. In December of 1948? A. I was.

Q. Do you know of your own knowledge whether these [24] three corporations were capable of redeeming all of the shares of stock owned by the Trust in each of the three corporations?

A. Would you repeat that again?

Q. Do you know of your own knowledge whether each of these corporations was financially capable of redeeming all of the stock of the Trust owned by the Trust in each of the three corporations?

A. I would have to look at the financial statements. I can't tell you that unless I see it.

Mr. Townsend: I may say that I think the record might speak for itself on that in that we have the corporate returns showing the surplus on those various dates, and we also have stipulated the number of shares held by the Trust, the amounts that were distributed to all the people in this redemption.

Mr. Aikens: On behalf of Howell Chevrolet I

(Deposition of F. Norman Phelps.)

object to statements made by counsel for the reason he is only taking into consideration only some of the factors that had to be considered by the shareholders and the corporate counsel in determining the course that was followed, and I particularly refer to the capital requirements established by the Chevrolet Motor Division.

Q. (By Mr. Thayer): I show you the balance sheet which is a part of [25] the corporate income tax return of Capitol Chevrolet Co. for the year 1948 and will ask you if that balance sheet reflects all of the matters which would have been reflected on the General Motor's-type balance sheet for the month of December, 1948?

A. May I ask a question?

Q. Yes.

A. On line 17, earned surplus, is this the same surplus as we have in the General Motors? Does this include everything? I have never seen this before. Does this include everything that we have on ours in our financial statements?

Q. As far as the surplus itself is concerned?

A. Yes.

Q. That reflects all of the information which is reflected on the General Motors form?

A. To the best of my knowledge, yes.

Q. Mr. Phelps, you have testified that the corporations did not redeem all of the stock owned by the Trust. You have also testified that Mr. Connell told you that General Motors required that the Trust be removed completely from these corporations. Did not your failure to redeem all of the

(Deposition of F. Norman Phelps.)

Trust stock constitute a violation of the requirements set forth by Mr. Connell and by the letters which are in evidence as Petitioners' Exhibits 27 through 32, both inclusive?

A. I don't think so. I think that we showed good [26] faith, and we tried to take out the Trust and the holding company and do everything that Chevrolet wanted, but there was just a small amount that I knew nothing about which was between Mr. Kenyon and Mr. Dempsey that they would take it out as soon as they possibly could; but we did everything Chevrolet asked us to do as far as we could, I understand.

Q. Did not the failure of the three companies to remove the holding company from ownership in their stock constitute a violation of the requirements of Chevrolet?

A. No. There was some new law coming out that Mr. Dempsey talked about and that they were waiting on, and I talked to Mr. Connell and asked him whether or not it would be satisfactory if we could wait until this thing would happen, because it would cost an awful lot of money to do the things that they required at the present time; and I asked for an extension, and I also wrote a letter on that.

Q. At any time during the period which you were the Regional Manager of Chevrolet Motor Division for the Pacific Coast Region, did you ever have occasion to make a request or a suggestion to a dealer under you concerning the operation of his dealership? A. Many times.

Q. Based upon your experience as an employee

(Deposition of F. Norman Phelps.)

of Chevrolet Motor Division, particularly upon your experience during the time in which you were the Regional Manager for [27] the Pacific Coast Region, did you have a belief on November 1, 1948, as to the consequences to the three dealerships, Capitol Chevrolet Co., Mid-Valley Chevrolet Co., and Howell Chevrolet Co., of their failure to comply with the request that the Trust and the holding company be removed from ownership of the stock in those corporations?

A. Do you want my experience as Regional Manager or as a dealer? You tell me which one you want, and I will be very happy——

Mr. Townsend: Respondent objects to that question as calling for a conclusion and calling for the opinion of the witness based on a hypothetical question which he is not qualified to answer.

The Witness: I am qualified to answer that one; if I have ever been qualified, I am qualified to answer that one. I know this: That any time that Chevrolet Motor Division requested a dealer to do anything, they had better do it or they will not have a new franchise, regardless of anybody else, the Government or anybody else, I know that and that is the only reason we did it.

Q. (By Mr. Thayer): Based upon your experience as an employee of the Chevrolet Motor Division, particularly your experience as Regional Manager of the Pacific Coast Region, did you have a belief in 1948 as to the consequences to the three [28] dealerships, Capitol Chevrolet Co., Mid-Valley Chevrolet Co., and Howell Chevrolet Co., of their

(Deposition of F. Norman Phelps.)

failure to comply with the suggestion of Mr. J. L. Connell that the Trust and holding company be removed from ownership of stock in such dealerships in such a manner as not to disturb the then existing proportionate control of yourself and Mr. Kenyon in those corporations?

Mr. Townsend: Would you just answer that yes or no, Mr. Phelps?

The Witness: Yes, I did.

Q. (By Mr. Thayer): What was your belief?

Mr. Townsend: Respondent objects to the question as calling for a conclusion. Further, it is a hypothetical question which assumes facts that are not in the record, facts which are disputed, and facts which are yet to be proved.

It has been called to respondent's attention that Mr. Phelps testified that Mr. Connell told him that the proportionate ownership should remain the same. If respondent did not object to that testimony, he does so now on the basis that it is hearsay testimony.

The Witness: My belief was that over a period of years that when Chevrolet makes a suggestion that you comply with that suggestion, and I assumed that Mr. Connell wanted to leave everything exactly the same as it was, because we were going along pretty well on an equal basis, Mr. Kenyon and myself particularly; and as far as any dealer doing other than what Chevrolet wants them to do, they just don't do it.

Q. (By Mr. Thayer): What was your belief as

(Deposition of F. Norman Phelps.)

to the effect upon the dealerships of their failure to comply with these suggestions?

A. It was my firm belief that unless we complied with Chevrolet's demands and requests that either our franchise would not be renewed next year or our franchise would have been cancelled, because we were going against a direct policy of theirs. That is the only reason we did it.

Q. Did you have that belief in 1948?

A. Yes.

Q. In December, 1948, did you have any need for the money which you received from Capitol Chevrolet Co., Mid-Valley Chevrolet Co., and Howell Chevrolet Co. upon the redemption by those companies of a portion of your stock?

A. Did I have any need for it? No particular need, no.

Q. Do you know of your own knowledge whether or not Mrs. Phelps had any need for the money received by her? A. She did not.

Q. In your discussions with Mr. Dempsey concerning the plan to remove the Trust and the holding company from the dealerships, did you ever request that the plan be so drawn [30] that you would receive any cash or property out of the corporations or any of them?

A. I did not.

Q. Did you at any time suggest to Mr. Dempsey that it would be a desirable feature of any plan which might be devised by him that you and Mrs. Phelps, or either of you, receive any cash or property from any of the corporations?

(Deposition of F. Norman Phelps.)

A. I did not.

Q. I show you a photostatic copy of an agreement dated December 21, 1948 between F. Norman Phelps, Alice Phelps, James A. Kenyon, Jackson Howell, and James A. Kenyon, Trustees of the Patricia May Kenyon Trust, and will ask you if it is your signature which appears thereon?

A. It is.

Q. I offer this in evidence as Petitioners' Exhibit No. 36.

Mr. Townsend: No objection.

(The document referred to was marked Petitioners' Exhibit No. 36 and received in evidence.)

[See page 157.]

Q. (By Mr. Thayer): Referring to Petitioners' Exhibit 36, Mr. Phelps, which is the agreement concerning the purchase by James A. Kenyon of the remaining Trust shares in Howell Chevrolet Company, I will ask you whether or not on or about the 21st day of December, 1948 similar agreements were entered into [31] concerning the purchase by Mr. Kenyon of the remaining Trust stock in Mid-Valley Chevrolet Co. and Capitol Chevrolet Co.

A. They were.

Q. (By Mr. Aikens): Are you a university graduate, Mr. Phelps? A. I am.

Q. When did you graduate from the university, or what university?

A. University of Michigan in 1920.

Q. And when did you first commence your em-

(Deposition of F. Norman Phelps.)

ployment with the Chevrolet Motor Division, or whatever that corporation was then known as?

A. It was Chevrolet Motor Division in 1921.

Q. And since 1921 until to date, as I understand your testimony, you have consistently worked for the Chevrolet Motor Division or Chevrolet dealers or as a dealer?

A. That is right.

Q. Were you ever at any time offered any position with the Chevrolet Motor Division superior to that of the Regional Manager?

A. I was many times.

Q. And what position, or positions, have you been offered by Chevrolet?

A. Assistant General Sales Manager for the Western [32] half of the United States.

Q. And when were you first offered that position, approximately? A. 1943.

Q. Subsequent offers were made to you of the same position after that by Chevrolet?

A. They were.

Q. I call your attention to Petitioners' Exhibit No. 31 which purports to be a letter written on the letterhead of Chevrolet Motor Division dated November 1, 1948 addressed to Howell Chevrolet purporting to have been signed by a J. W. Steele, Zone Manager, and call your attention particularly to the lower left-hand corner thereof and the words, "The foregoing is hereby agreed to and accepted this 1st day of November, 1948, Howell Chevrolet, By——" Is that your signature? A. It is.

Q. Were you requested or were you not re-

(Deposition of F. Norman Phelps.)

quested by Chevrolet Motor Division to sign that letter agreement consisting of Petitioners' Exhibit 31? A. I was.

Q. I call your attention to Petitioners' Exhibit 32, likewise calling your attention to the lower left-hand corner of that exhibit and to the same words referred to that I have mentioned as being contained in Exhibit 31 and ask you whether or not the Chevrolet Motor Division or some representative of [33] that Division asked that you sign that letter agreement on behalf of Howell Chevrolet Co.? A. Yes.

Q. I show you now what purports to be a photostatic copy of the Minutes of the Meeting of the Board of Directors of Howell Chevrolet held December 21, 1948 and identified here as Joint Exhibit 7-G, and I would like, Mr. Phelps, for you to look at that and read it.

(The Minutes were read by the witness.)

The Witness: Yes, I remember this.

Q. (By Mr. Aikens): Do those Minutes fairly reflect the facts as you understood them to be respecting Howell Chevrolet at the time of the meeting of December 21, 1948?

A. That was the meeting at which Mr. Dempsey and Mr. Kenyon got together on the method that could be devised so that we could comply with Chevrolet Motor's request.

Q. You were the President of the corporation at that time, were you? A. Vice-President.

Q. Do the facts as therein related fairly reflect

(Deposition of F. Norman Phelps.)

the facts as you knew them at that time respecting Howell Chevrolet Co.?

A. As I knew them, yes.

Q. Where was that meeting held? [34]

A. As I recall, I think it was held in Mr. Dempsey's office, right in this office.

Q. Was Mr. Howell personally present at that time? A. No, he was not present.

Q. Was he consulted respecting the action that was taken at that meeting prior to the meeting?

A. I don't know. He might have been.

Q. Do you have any recollection of whether you ever told Mr. Howell of the action that was to be taken at the December 21, 1948 meeting of the Board of Directors of Howell Chevrolet Co.?

A. I don't remember whether I did or not. It wouldn't have made any difference, because we had to do it anyway.

Q. I take it that Mr. Kenyon and you controlled the Board, and you felt it was immaterial one way or the other whether you consulted Mr. Howell before the action was taken?

A. Not a bit. We didn't control it at all. We each owned one-third of it. It was just a case of something we had to do for Chevrolet Motor Division. The only reason Mr. Kenyon knew about it was because he handled that with Mr. Dempsey, and he was down here handling the financial end of the business.

Q. During your long experiences with the Chevrolet Motor Division, either as you worked up the ladder of success with Chevrolet Motor Division

(Deposition of F. Norman Phelps.)

or as an employee of a [35] Chevrolet dealership or subsequently as a Chevrolet dealer, have you ever known, of your own knowledge, of any dealer selling agreements having been cancelled or not renewed for the failure on the part of a Chevrolet dealer to comply with a suggestion or a request made to that dealer by the Chevrolet Motor Division?

A. Yes, but I would like to say that there are very few dealers that want to argue to Chevrolet Motor Division. If Chevrolet Motor Division asks them to do certain things, they usually do them, Mr. Aikens.

Q. If they do not do them, what happens?

A. Well, something happens, and there are very few of them that want to take that chance. In other words, on your Capital Standard Agreement, you have to have so much money in there, and it says in the Capital Standard Agreement that unless you keep that amount there, you are subject to cancellation for cause and no one wants to fight the General Motors Corporation. Does that answer your question?

Q. Thank you. Based upon your long experience with the Chevrolet Motor Division and particularly your interest in Howell Chevrolet and generally to the other corporations, did you, after receipt of letters delivered to you addressed to Howell Chevrolet in particular and, as I understand it, the two other corporations, Mid-Valley and Capitol, set any time within which the Trusts were to be extin-

(Deposition of F. Norman Phelps.)

guished or [36] retired from the dealership as well as the holding company?

A. Did we set any time? Is that your question?

Q. After a time was set within which they were to be done, and I refer you again to Petitioners' Exhibits 31 and 32 each addressed to Howell Chevrolet Co., and I call your attention particularly to Paragraphs 1 through 3 thereof, did you feel that there was a necessity to comply with the terms of this letter agreement? A. I certainly did.

Q. And I refer now to the two letters addressed to Howell Chevrolet, Petitioners' Exhibits 31 and 32. A. Yes.

Q. With respect to the similar letters almost identically worded that were received by Mid-Valley Chevrolet and Capitol Chevrolet, did you feel likewise that there was a necessity that the terms of that agreement be complied with?

A. I certainly did.

Q. You have referred previously to one or more conversations with Mr. Connell, then Regional Manager, respecting the desire of Chevrolet to have the holding company and the Trust withdrawn from any participation in these three corporations and the balance of control with respect to you and Mr. Kenyon in some of those dealerships and you and Mr. Kenyon and Howell Chevrolet Co., and having had that conversation with Mr. Connell, did you feel that it was necessary [37] that his suggestions be followed? A. I certainly did.

Q. Was it his suggestion that the balance of power, and I use that broadly speaking, remain the

(Deposition of F. Norman Phelps.)

same throughout the three dealerships as they previously existed?

Mr. Townsend: Respondent objects to the question as calling for hearsay.

Mr. Aikens: I will withdraw the question and reword it.

Q. (By Mr. Aikens): Did anyone from the Chevrolet Motor Division suggest that the balance of power remain the same after the retirement of the holding company and the Trust company?

Mr. Townsend: Same objection.

The Witness: Mr. Connell, in stating that the Chevrolet Motor Division would not allow a holding company or a Trust to have any part of a Chevrolet franchise, also said that when we made that change he would suggest that there would be no change in the proportionate amounts of stock held by each person.

Q. (By Mr. Aikens): Based upon your long experience associated with, and indeed executive of, Chevrolet Motor Division, what is the word "suggested" by Chevrolet synonymous with insofar as a dealer is concerned? [38]

A. Things of importance, any suggestions complied with as far as the dealer is concerned.

Q. Can you, based upon extensive experience, give me any synonyms that you think mean the same thing from your experience with the word "suggestion" or "request" as it relates to a request or a suggestion from the Chevrolet Motor Division to a dealer?

A. I don't know about a synonym, but it is hard

(Deposition of F. Norman Phelps.)

to explain. If Chevrolet Motor Division suggests that you do something, the dealer assumes that they want it done, and they do it. They just do not want to take any chances. That's the whole thing. I don't think it is a command or anything of the kind, but the dealer takes it as such.

Q. Did you feel, and I refer now to the time or the interim from the time Mr. Connell first talked to you about that matter up to and through the time that the actions were taken by the various Boards of Directors of Howell Chevrolet, Mid-Valley Chevrolet, and Capitol Chevrolet, all approximately on December 21, 1948, that if you failed or refused to comply with the suggestion that the interest of the Trust be extinguished, that the selling agreements were in jeopardy?

A. We weren't certain, but we didn't feel we should take any chances.

Q. Did you feel that the selling agreements were in jeopardy if you flatly refused? [39]

A. I personally did.

Q. Or failed to comply with the suggestion?

A. Yes.

Q. Did you feel that the selling agreements were in jeopardy if you failed or refused flatly to maintain the balance of control that Mr. Connell had suggested?

A. I felt that it was just as important, because it was all said in the same breath that they would not allow this and in taking out the Trust and in taking out the holding company that you leave the

(Deposition of F. Norman Phelps.)

proportionate shares the same. I took it as one package.

Q. Based upon your extensive experience, and I ask now for an expert opinion, do you feel that Jackson Howell alone could have maintained that franchise if you and Mr. Kenyon had decided to get out and leave Jackson Howell alone in there at that time in 1948? A. No.

Q. Did you ever personally discuss with Mr. Kenyon his buying all of the interest of the Trust and J. A. K. Co. from the various dealerships?

A. We might have discussed it, but not seriously. He handled that with Mr. Dempsey, our attorney.

Q. Were you or were you not intimately familiar with Mr. Kenyon's financial circumstances at that time?

A. I would say I knew quite a bit about them, yes. [40]

Q. At that time you were in a position pretty well to ascertain his net worth?

A. I would say so.

Q. And the liquidity of his assets?

A. I don't know about the liquidity of his assets, no, not all of them, because I didn't know what they were.

Q. When this problem of balance of control and the extinguishments of the Trust and the extinguishment of the holding company's interest in the various dealerships was raised, did you at any time ever ask Mr. Kenyon to step up and buy out

(Deposition of F. Norman Phelps.)

the Trust or buy out the holding company so that he individually could hold it all?

A. I did not. The only thing I told him was what Chevrolet Motor Division told me.

Q. While you have been a Chevrolet dealer, Mr. Phelps, if the Regional Manager were to tell you that he suggested that you avoid wearing red ties, would you be inclined to wear red ties?

A. I don't think the Regional Manager would say that in the first place.

Q. Assume that the Regional Manager told you that he did not like to have his dealers wear red ties, would you be inclined to wear red ties in his presence? A. Yes, I think I would.

Q. Were you or were you not at any time advised by Mr. [41] Thomas R. Dempsey, now deceased, that the monies received on the contracts of these various corporations would be handled by you or received by you and given long-term capital gain treatment?

A. They certainly were.

Q. What did Mr. Dempsey say in that connection to you?

Mr. Townsend: Respondent objects to the question as calling for hearsay.

Mr. Aikens: Withdrawn. Mr. Phelps, I have withdrawn the last question. However, if you have anything to say in response to it, would you say it now?

The Witness: I don't know whether it has any bearing, but I didn't want to do it on that basis, because I was worried about the Capital Standard

(Deposition of F. Norman Phelps.)

Agreements. I remember talking to Mr. Dempsey about how much it was going to cost, and he said I could take it on a long-term capital gain, and he said he had found out, and in two days' time he called me in Sacramento, and told me that it was perfectly satisfactory to do it, because it could be done on a long-term capital gains basis and it would be 25 per cent instead of ordinary income; because at that time we were making quite a lot of money and I didn't want the thing done that way; and that is the way he said. That is the only way he could do it to comply with Chevrolet's request.

Q. Did you and Mr. Howell ever at any time from the [42] commencement of Howell Chevrolet and until December 21, 1948, have any conversations relating to the fact, if it be a fact, that he preferred to own more of the company?

A. Who?

Q. That Mr. Howell would prefer to own more of the company. A. No.

Q. Did he, during that period of time, at any time indicate to you that the third, third, and third was an unsatisfactory arrangement as far as he was concerned? A. Not that I recall.

Mr. Thayer: Just one question to clear up the record. A few moments ago I asked you the following question, "Based upon your experience as an employee of Chevrolet Motor Division, particularly upon your experience during the time in which you were the Regional Manager, did you have a belief on November 1, 1948 as to the consequences to the three dealerships, Capitol Chevrolet Co., Mid-Val-

(Deposition of F. Norman Phelps.)

ley Chevrolet Co., and Howell Chevrolet Co., of their failure to comply with the request that the Trust and the holding company be removed from ownership of the stock in those corporations?

Following the asking of that question, Mr. Townsend interposed an objection, and following his objection and without directly answering the question, you stated, "I know this: That at any time that Chevrolet Motor Division [43] requested a dealer to do anything, they had better do it or they will not have a new franchise, regardless of anybody else, the Government or anybody else, I know that, and that is the only reason we did it."

Was the answer which I have just quoted a statement of your belief as to the effect upon the corporation of your failure to comply?

The Witness: It was.

Mr. Aikens: I have, I think, two more questions, if I may.

Q. (By Mr. Aikens): You have related your background, Mr. Phelps, indicating virtually your mature life you have been in the automobile business associated directly or indirectly with Chevrolet? A. That's right.

Q. Could you tell us if you know the background, briefly, of Mr. Kenyon as it relates to his association, directly or indirectly, with Chevrolet?

A. Practically the same as mine.

Q. And with respect to Jackson Howell, could you tell us just generally and very briefly respecting his experience with Chevrolet?

A. It was with the corporation. The only differ-

(Deposition of F. Norman Phelps.)

ence between his and Mr. Kenyon's and my own was that he was with [44] General Motors Acceptance Corporation for a good number of years and came with Chevrolet Motor Division in 1933.

Q. Assuming that upon your failure and refusal to comply with Chevrolet's request respecting any one or all three of these dealerships, and a termination had resulted, could you tell us, based upon your extensive experience with Chevrolet, would any other Chevrolet dealership franchise have been available to you or offered to you or the corporations?

A. They would not, or any other General Motors franchise would not have been offered to us.

Q. Did you know of any other automotive franchises that were available to you, and when I say "you" I mean these three corporations, in 1948 or 1949 had the unfortunate event of termination by Chevrolet occurred?

A. Did I know of any? No.

Q. I have no further questions.

Cross Examination

Q. (By Mr. Townsend): At the time of the stock reduction in 1948, Mr. Phelps, was it your intention that the business continue as it did before, the business of the three corporations continue as it did before? A. Yes.

Q. Did the corporations contract any of their business [45] or curtail any of their operations after this redemption? A. Not that I recall.

Q. The resolutions providing for the redemp-

(Deposition of F. Norman Phelps.)

tion, specifically Exhibits 5-E, 6-F, and 7-G, attached to Stipulation of Facts, state that the redemption will reduce the corporations' working capital below their minimum requirements and therefore authorize the officers to borrow on behalf of the corporations. What do you mean by minimum requirements?

A. The minimum requirements as set up by Chevrolet Motor Division.

Q. And that is with respect to working capital?

A. Working capital.

Q. Did the officers actually borrow money on behalf of the corporation in accordance with this authority?

A. I don't recall. I think we did at times.

Q. In your direct testimony, Mr. Phelps, you stated that Joe Carpenter was one of the named parties in the contract between General Motors and Capitol, which is similar to Exhibit 24 between General Motors and Mid-Valley. I beg your pardon. He was one of the named parties in Paragraph 3 of the contract between General Motors and Mid-Valley.

A. I might have said he was. Joe Carpenter was the operator in Mid-Valley. I was certain that he was on Paragraph 3. However, all we have to do is look at it and we can [46] tell whether he is or not.

Q. Mr. Carpenter owned stock for a while in Capitol, but his stock was reassigned, was it not?

A. You mean his stock in Mid-Valley?

Q. Yes, I beg your pardon.

A. I really don't recall.

(Deposition of F. Norman Phelps.)

Q. You don't recall anything about Carpenter's stock?

A. No, I don't recall what the particulars of it were.

Q. Well, any of the background or anything about his having some and then not having some?

A. I don't recall it.

Q. Now, you also stated on your direct testimony, I believe, that when the plan was formulated by Mr. Dempsey, it was sent to you along with the copy of the Minutes, is that correct?

A. That is correct. The plan was in the Minutes.

Q. The plan was in the Minutes. In other words, you got a copy of the Minutes before your corporate meetings were actually held?

A. No. We didn't. We did have a meeting, and we did decide, and it was there, the record of it as to what we were going to do and how it could be done for the best of everyone in complying with Chevrolet Motor Company's request. Does that answer your question?

Q. The Minutes I refer to, Mr. Phelps, adopt the plan [47] which you eventually followed through. The letters refer to a fact that a plan had been informally agreed upon, which I assume was at a prior date.

A. I think that is the one we talked about to Mr. Dempsey on the telephone.

Q. But at this particular meeting you adopted the plan itself, as formulated by Mr. Dempsey?

A. That is right.

(Deposition of F. Norman Phelps.)

Q. And these Minutes were also, I believe you stated, prepared when the plan was formulated? That is what I am having a little difficulty following.

A. We had a meeting here, and we talked about the different plans. They finally decided on one plan. Then we came down here, and we had the meeting and adopted that plan as the one that would be feasible to comply with Chevrolet Motor Company's request.

Q. And were the three corporation meetings held at the same time? A. Yes.

Q. And they were held in Mr. Dempsey's office?

A. Yes, right in this office.

Q. Were these Minutes typed up prior to the meeting or after the meeting?

A. After the meeting.

Q. They were typed up here in Mr. Dempsey's office? [48]

A. I don't know about that, where they were typed up, but I imagine so.

Q. You also spoke about a delay in eliminating the holding company, the J. A. K. Company, and the reason was that a new law was coming out. Was the law you were speaking about the income tax revisions which were then planned?

A. I really don't know anything about the law. The only thing that I told Chevrolet Motors Division was that we couldn't comply with that request, and I asked for six months' time to do something about it, because my attorney, Mr. Dempsey, said there was some new law that was going to come

(Deposition of F. Norman Phelps.)

out. We could comply with their request and it wouldn't cost quite as much money as if we did it right now.

Q. Money in what way?

A. Taxes or something.

Q. Directing your attention to Exhibit 35, Mr. Phelps, which is a letter sent by you to Mr. Strang and dated October 16, 1948, and particularly the third paragraph thereof which reads as follows: "As you know, the J. A. K. Co., which is a Nevada corporation, owned by James A. Kenyon, now owns 30 per cent of the stock in Capitol Chevrolet Co., 30 per cent in Mid-Valley Chevrolet, and 20 per cent in Howell Chevrolet. Our attorney advises that if this J. A. K. Co. were to be liquidated at the present time, the tax situation is such that Mr. Kenyon and I would be subject to approximately [49] ninety thousand dollars taxes."

In Paragraph 4, "It would seem that if it is possible for you to permit us to postpone the change until the Revenue Act of 1949 passes both the House and the Senate, it would be most helpful to us."

How would the liquidation of the J. A. K. Co., which was wholly owned by Mr. Kenyon, result in you being subject to tax?

A. I have no idea. That was a letter I wrote to Mr. Strang. I don't know. I might have miswritten it there or something. It wouldn't have any——

Q. Why didn't the J. A. K. Co., which was wholly owned by Mr. Kenyon, distribute its stock to Mr. Kenyon and thus comply with the General

(Deposition of F. Norman Phelps.)

Motor's requirement respecting the holding companies?

A. I have no idea. I don't know anything about that. It was up to Mr. Dempsey, our attorney, to handle that.

Q. And I believe you stated that Mr. Kenyon did not purchase all the stock of the Trust, because he didn't have the financial ability to do so?

A. There was something on that that Mr. Dempsey and he handled. There was some reason why he did not purchase it. I really don't know the answer to that, but I thought we had complied with the majority of Chevrolet's request, and we had shown our fair intentions, and we were doing what they wanted [50] us to do.

Q. I believe you also testified that you knew of Mr. Kenyon's financial situation, net worth at about the time of this distribution. Is that correct?

A. I said I knew approximately his net worth, yes. I also said I didn't know exactly how liquid it was.

Q. You don't know or do you have any idea of how much money he had on hand?

A. I might have at the time but I don't remember what it was.

Q. Did you ever discuss with him how much money he had, whether he had enough money to purchase this stock?

A. I remember he said he didn't have enough money to purchase it.

Q. Didn't General Motors deal with you and Mr. Kenyon on a personal basis regardless of your

(Deposition of F. Norman Phelps.)

stock ownership? A. What do you mean?

Q. Well, I direct your attention to Exhibit 24 which is the Direct Dealer Selling Agreement between General Motors and Capitol Chevrolet Co. and Paragraph Third thereof which lists F. Norman Phelps and James A. Kenyon, and it goes on to state that the individual, or individuals, designated shall be responsible for any act or omission of any dealers' agents or employees which may be contrary to the purposes and objectives of this agreement or the obligations of the dealer under— [51] and so on. Does that not indicate that General Motors dealt with you and Mr. Kenyon on an individual basis, regardless of the stock ownership?

A. Yes, it does.

Q. As a matter of fact, Mr. Kenyon didn't own any stock in his own name at all, did he?

A. Did he own any?

Q. I mean J. A. K. Co. and the Trust.

A. Well, he owned the Trust and he owned the stock. He owned the company that owned it.

Q. Your wife owned stock at the time that you entered into this contract, did she not?

A. Yes.

Q. Why was not her name added in Paragraph Third thereof?

A. Because she would not operate the deal, attend the meetings and do all the things that were absolutely necessary to do.

Q. And Mrs. Phelps also owned stock in Mid-Valley and Howell Chevrolet Co.?

A. That is right.

(Deposition of F. Norman Phelps.)

Q. She was not named in Paragraph Third of the contracts either.

A. Only because she was not the actual operator. Just the actual operators of the business were on Paragraph Third. [52]

Q. So that regardless of the stock ownership, General Motors looked to you and Mr. Kenyon as the active management and as the individuals responsible to keep the provisions of this contract?

A. Chevrolet Motor Division held Mr. Kenyon and myself responsible for Capitol Chevrolet. They held Mr. Carpenter and Mr. Kenyon and Mr. Phelps responsible for Mid-Valley Chevrolet. They held Mr. Kenyon, Mr. Howell and Mr. Phelps responsible for Howell Chevrolet.

Q. After these corporations were liquidated in 1950, Mr. Phelps, you were still associated with Capitol Chevrolet Co.? A. Yes.

Q. And you continued the management of that corporation? A. I did.

Q. Were you the sole stockholder of that corporation, you and your wife? A. Yes.

Q. And after that liquidation in 1950, do you know, of your own knowledge, whether the Mid-Valley Automobile Agency continued?

A. It did. It continued as a dealership.

Q. Did Mr. Kenyon continue in the active management of Mid-Valley? [53]

A. I think so.

Q. With respect to Howell Chevrolet, after the date of liquidation in 1950, did Mr. Howell continue the active management of Howell Chevrolet?

(Deposition of F. Norman Phelps.)

A. He did.

Q. Did you ever independently suggest to the General Motor's officials that the ownership of these corporations should remain the same in view of their successful management?

A. No, I did not.

Q. That is enough for me.

Redirect Examination

Q. (By Mr. Thayer): You stated, I believe, that you think that the three corporations probably borrowed money after the redemption of the stock in question, and it is my recollection of your statement that the reason for it, you said, was that it was necessary to maintain your capital standard requirement. Does borrowed money enter into the capital standard?

A. No, it does not. If I said that I made a mistake. It is wholly-owned capital. You have to have not borrowed money, but you can borrow money at times to carry on your business.

Q. What you really meant was you borrowed money for working capital?

A. That is right, to carry on the regular business. [54]

Q. That was irrespective of the capital standard requirements set up by General Motors?

A. That is right. The only thing we signed of General Motors was we would not draw any money out of the business until the capital standard requirements were up.

Q. Do you know of your own knowledge whether

(Deposition of F. Norman Phelps.)

or not most of Mr. Kenyon's properties were in the name or stood in the name of, and belonged to, J. A. K. Co. in 1948?

A. I really don't know what and how they were.

Q. Do you know of your own knowledge the approximate value in December, 1948 of the stock in the three corporations owned by J. A. K. Co.?

Mr. Townsend: I think we can stipulate to that.

The Witness: I could take the percentage and figure it out for you, but I——

Mr. Townsend: I will stipulate to that. Your question was the stock ownership by J. A. K. Co.

Q. (By Mr. Thayer): Well, the value of the stock owned by J. A. K. Co.?

A. Well, we can take the net worth and then take the percentage they had of each one and figure it out for you.

Q. Mr. Phelps, in the direct dealer selling agreement between Chevrolet Motor Division and a dealer, are the parties on Paragraph 3 always the same persons who own an interest in the corporation, if it is a corporate dealer? [55]

A. Not always. They are usually the actual operators of the business.

Q. They are the people who operate the business?

A. They are the operators of the business, the ones that contact Chevrolet, the ones that do the actual work around the dealership, the ones that Chevrolet hold responsible.

Q. It has been stipulated that in 1950 Capitol Chevrolet purchased all of the stock then owned

(Deposition of F. Norman Phelps.)

by Mr. Kenyon in that corporation. It has also been stipulated that Howell Chevrolet Company purchased from Mr. Kenyon all of the stock in that corporation owned by Mr. Kenyon and that Mid-Valley purchased from you all of the stock in that corporation owned by you and Mrs. Phelps. Those purchases destroyed the proportionate interest which you had so carefully maintained in 1948. Was General Motors informed or the Chevrolet Motor Division of General Motors informed of what you proposed to do in these 1950 changes?

A. They were.

Q. You discussed it with them beforehand?

A. We did.

Q. Did they raise any objection?

A. None.

Q. Do you know why they did not object to this change in proportionate interests when they had objected to the [56] change in 1948?

Mr. Townsend: Respondent objects to that question as calling for hearsay, and further that the witness is not qualified to answer.

Q. (By Mr. Thayer): Why did not they object to the change in proportionate interest in 1950 when they objected in 1948?

A. Because in 1950 I bought out Kenyon's interest, and Alice and I had Capitol Chevrolet all ourselves. Kenyon bought out the interest that I had in Mid-Valley, and he owned all of Mid-Valley. That was the big two right there. The only reason back in those days that they suggested we keep everything the same was so we wouldn't have any

(Deposition of F. Norman Phelps.)

arguments and stuff like that. It was the only reason.

Q. Based upon your experience in your various executive capacities with Chevrolet Motor Division, do you know what General Motor's policy was toward dissension in dealerships?

A. Certainly I do. If they had dissension in dealerships, they cancelled you.

Q. In 1950 was there any dissension between you and Mr. Kenyon?

A. Not any real dissension. I would not say there was any real dissension. It was just a case that he wanted to go down in Southern California all the time, I guess, and so we just decided that—he suggested that we split up. There [57] was not, maybe, the same friendly relationship, but we didn't really——

Q. Was Chevrolet Motor Division advised of the fact that there was at least the potential ground of dissension?

A. I do not think so; no. I don't think we did. All I asked was would they have any objections if I took all of Capitol and Jim took all of Mid-Valley, and that Jim would get out of Howell, and they said there would be no objection.

Mr. Thayer: That is all.

Q. (By Mr. Aiken): Mr. Phelps, I hand you now Petitioners' Exhibit 26 and particularly desire to call your attention to page 5 of that exhibit and ask you to read it to yourself.

(The witness read page 5 of Exhibit 26.)

Q. (By Mr. Aiken): With respect to any liens

(Deposition of F. Norman Phelps.)

or encumbrances that were ever placed on the stock of a Chevrolet dealership, did you feel obligated to advise Chevrolet of the existence of the proposal to put a lien or borrow money on stock?

A. Will you repeat that question?

Q. With respect to any liens or encumbrances that were ever placed on the stock of a Chevrolet dealership, did you feel obligated to advise Chevrolet of the existence or the proposal to put a lien or borrow money on stock? [58]

A. If we ever had to deposit money on Chevrolet stock with a bank to borrow money, Chevrolet Motor Division should have been advised.

Q. In fact, there is a division of General Motors that is known as Motor Accounting Division which checks dealerships to ascertain that as a part of its audit?

A. That is correct, in principal cities only.

Q. And while you were a Regional Manager, was there any policy in Chevrolet respecting dealers pledging General Motor's dealership stocks to banks, and so on?

A. That was the reason for Trusts and all that sort of thing not being able to hold any stock. There was an incident that occurred back East where the principal died and the bank came in, and they owned a part of the dealership; and Chevrolet Motor Division had to deal directly with directors of banks who knew nothing about Chevrolet franchises, and that was the background, I understand, for the saying that no Trusts or any banks could own any part of a dealership.

(Deposition of F. Norman Phelps.)

Mr. Townsend: Did this occur while you were with General Motors?

The Witness: Yes.

Mr. Townsend: You know of your own knowledge, then?

The Witness: Yes.

Q. (By Mr. Aikens): I am not certain that the answer is responsive to [59] the question that I asked. The question that I would like to ask now is was there a policy of Chevrolet Motor Division against dealers using Chevrolet dealership stock as collateral with banks and financial companies as a general rule?

A. There certainly would be.

Q. And was there such a policy?

A. I don't remember whether such a policy or not existed, but it was just never done. It was just one of those unwritten laws. I don't remember as to a policy.

Q. As Regional Manager did you ever advocate that they go out and deposit their stocks for any company?

Mr. Townsend: Respondent objects to the question.

The Witness: Certainly not.

Q. (By Mr. Aikens): Do you have any stock or own any stock in Howell Chevrolet Company today? A. No.

Q. You have completely retired from having any financial interest in that corporation?

A. That is right.

Mr. Aikens: That is all.

(Deposition of F. Norman Phelps.)

Recross Examination

Q. (By Mr. Townsend): Is it your testimony that the prime movers in rejecting and formulating the various plans considered in this [60] redemption were Mr. Kenyon and Mr. Dempsey; that you personally didn't enter a great deal into it?

Mr. Aikens: I am going to object on the part of Howell Chevrolet upon the grounds that it is ambiguous and particularly in the use of the words "prime factors" or "prime moving parties."

The Witness: I will be glad to tell you. You want to know the facts. I talked to Chevrolet. They told me what they wanted done. I, in turn, talked to Mr. Kenyon. I, in turn, talked to Mr. Dempsey. I told them, "Figure out how you can do it." Mr. Dempsey figured it out. Mr. Kenyon was down here, and they had a lot of contacts together, much more than I did, because I was operating up in Sacramento; and they came out with this plan. Does that answer your question?

Q. (By Mr. Townsend): Yes, it does. When you reduced your working capital below minimum requirements, as set by General Motors, was it necessary to get their permission to do so?

A. It was very necessary to get their permission. I informed the Regional Manager at the time that we would leave every bit of money in the business before we drew any dividends or anything else out, and that we would be very frugal and if they would just play along with us, we were certain we could get our capital standards up to meet their requirements in a short space of time; and

(Deposition of F. Norman Phelps.)

the only reason they were below [61] was because this emergency came up when they insisted they get the Trust and the holding company out of the corporation.

Q. Now, under this Direct Dealer Selling Agreement, Exhibit 24, at the time you entered into the agreements you and Mrs. Phelps owned stock in Capitol Chevrolet. Would General Motors have objected if you had transferred Mrs. Phelps' stock to your name? A. I don't think so.

Q. Why?

A. Well, because we were married in a community property state. Half of everything that she had belonged to me, anyway, and half of everything I had belonged to her.

Q. All right. Did Mr. Kenyon consult anyone before he usually voted the stock of the Trust, the Patricia May Kenyon Trust?

A. No. He had complete jurisdiction over the Trust.

Q. Why would there be any arguments if you had a larger interest in the corporations than Mr. Kenyon after this redemption? It would seem that there would be less chance for arguments if one man was largely in control than if you had two men with equal control.

A. Well, I can see, putting myself in Chevrolet Motor Company, that if you have three dealerships that are going along pretty well and maybe doing modestly, why disrupt an outstanding job? Let it go along just the same. I would [62] have said,

(Deposition of F. Norman Phelps.)

"Let's don't rock the boat. You are getting along fine. Just keep on selling more Chevrolets."

Q. I believe you stated there would be less chance for argument that way?

A. That is right.

Q. Arguments between you and Mr. Kenyon or——

A. If you and I were in business, and we were both strong-minded people, and you owned 51 per cent, and I owned 49 per cent, why, we might be very good friends; but some time you might want to show your authority, and if both of us just owned 50 per cent, neither one had the authority. That would be their thinking.

Q. Did Mr. Dempsey represent you in Federal income tax matters?

A. Yes, he did.

Q. And also the corporations?

A. Yes, he did.

Q. And was there any policy of General Motors against a stock of the dealerships being pledged with the corporation itself to secure personal drawings, say, of one of the owners?

A. I don't understand.

Q. Was there any policy of General Motors with respect to a dealer himself pledging his stock with his own corporation to secure a personal drawing or a loan from this [63] corporation?

A. Oh, no. That would be perfectly permissible. It would not change anything if he needed something quick and would pay it back at the end of the year. That would be perfectly all right.

(Deposition of F. Norman Phelps.)

Q. I have no further questions.

Q. (By Mr. Aikens): I have one question. Were a dealer to borrow on money from his own corporation and pledge that corporation's stock to that corporation it would affect, detrimentally, the net working capital position of that corporation, would it not?

A. Affect the net working capital?

Q. Yes. A. No.

Q. Mr. Phelps, on all advances or loans to officers, where does the amount of that loan show on General Motor's statement?

A. Deferred asset.

Q. Does that deferred asset add to your current assets so as to determine net working capital in accordance with the standards of Chevrolet?

A. You could take out capital from above the line, put it down in the bottom of the line, and your net worth would [64] be the same. You would reduce your net working capital by that amount.

Q. By the amount that was borrowed?

A. That is right.

Mr. Aikens: That is all.

Recross Examination

Q. (By Mr. Townsend): Could you give me very generally what the minimum requirements would be for General Motor's working capital?

A. They make a survey of each and every dealership. Each dealership is different. If you handle—if you are a large dealership, you need a lot of parts, and if you sell a lot of cars, even though

(Deposition of F. Norman Phelps.)

your potentialities are no greater, you have to have more used cars; and they take your experience and they refigure your capital requirements every three months or very six months and then Chevrolet figures it for the dealer's own good so he doesn't take out too much money. It is a very good system, and each one is individual.

Q. Could you tell me by reference to your Exhibit 26 the dealer's capital standard program. What the minimum requirement was for that year with respect to Capitol Chevrolet.

A. Additional capital required to bring it up to the standard. Here is your standard on line 55 on page 3. (Indicating.) That is the capital standard set-up by Chevrolet Motor Division. Over on your right-hand column it [65] shows you the total owned capital. On this one it is \$300,533. The actual owned capital as of 7-31-47 is \$259,621. You have additional capital needed to come up to Chevrolet's requirement of \$40,912. What this says at the bottom is that the dealer will not draw out any money until they meet the General Motor capital requirements.

Q. And did they meet the requirements shortly thereafter?

A. I imagine. Again, I don't know, but I imagine that they did, because \$40,000 in those days wasn't very hard to get.

Q. Would those same figures apply to your other two corporations?

A. Same figures? I don't know.

(Deposition of F. Norman Phelps.)

Q. I mean roughly, for example, of the required standard, and it lists a figure——

A. Each standard has to be worked separately, and it all depended on what the trend would be.

Q. Would you not be able to testify as to the similarity, as far as that is concerned?

A. No. I could tell you by looking at each and every individual capital standard. As to how long it would be and how long it would take, by looking at your financial statement and Chevrolet's reason. If you say you will not draw any money out of the business until they meet those standards, [66] but if you keep drawing it out and don't meet the standard, that is reason for termination for cause, and you lose your Chevrolet franchise or it will not be renewed, because capital is very important.

Mr. Townsend: That is all I have.

Mr. Thayer: May it be stipulated that the deposition may be signed before any notary public and further that whether it be signed or unsigned, it may be used for the same manner and the same purpose and place and for the same intents and purposes as it would be if it were signed?

Mr. Townsend: So stipulated.

Mr. Aikens: So stipulated.

Mr. Townsend: It is stipulated that this deposition may be introduced in evidence at the hearing set for September 12, 1955 at Los Angeles, California. It is further stipulated that the reporter may serve copies on the parties without the necessity of sending them to the Tax Court.

Mr. Aikens: So stipulated.

Mr. Thayer: So stipulated.

(The deposition was closed at 12:30 p.m.)

The undersigned certifies that he has read the foregoing testimony adduced at the place and on the date shown in the above-entitled cause; that the 67 pages of testimony constitute a full, true and correct transcription of said testimony; and that changes, alterations or modifications, if any, have been noted by the notary public, at my suggestion, and initialed by me in each instance.

Sacramento, California, August 25, 1955.

/s/ F. NORMAN PHELPS,
Deponent

PETITIONERS' EXHIBIT No. 24

DIRECT DEALER SELLING AGREEMENT

Chevrolet Motor Division, General Motors
Corporation

In Witness Whereof, the parties hereto have executed this Agreement in duplicate the day and year first above written.

Chevrolet Motor Division,
General Motors Corporation

/s/ By A. W. Strang, Zone Manager

Capitol Chevrolet Company,
Dealer

/s/ By F. Norman Phelps, President

Petitioners' Exhibit No. 24—(Continued)

Town and State: Sacramento, Calif. Date: November 1, 1948.

Witness: Ralph W. Robb.

If Dealer is a corporation, show State in which incorporated: California.

Name of Dealer's Bank: Capitol National Bank, Sacramento, California.

Form No. GSD-201-Chevrolet-48

Chevrolet Motor Division—General Motors
Corporation

Direct Dealer Selling Agreement

This Agreement, made this 1st day of November, A.D. 1948, by and between Chevrolet Motor Division—General Motors Corporation, hereinafter called Seller, and Capitol Chevrolet Company, City and County of Sacramento, California, a corporation, hereinafter called Dealer.

Witnesseth:

In Consideration of the promises hereinafter made by the parties to each other, it is agreed as follows:

First: Seller will sell and dealer will buy Chevrolet motor vehicles and chassis, subject to the terms and conditions hereof, for resale in the following described territory, but not elsewhere, namely:

Exclusive selling rights within the specific Security Area as set forth in the attached "Territory

Petitioners' Exhibit No. 24—(Continued)

Security Schedule", which schedule is subject to change from time to time, as the Security Area for the location occupied by dealer, and non-exclusive selling rights in all other communities in any of the United States, the District of Columbia or Alaska in which no authorized Chevrolet dealer is located or which are not within the Security Area of an authorized Chevrolet dealer or dealers.

Second: The terms and conditions set forth in the attached "Terms and Conditions—Direct Dealers", bearing Form No. GSD-202-Chevrolet-48 and Identification No. 48-1103, are hereby made a part hereof with the same force and effect as if set forth at length herein.

Third: This is a personal contract, being entered into in reliance upon and in consideration of the personal qualifications of and representations with respect thereto of F. Norman Phelps and James A. Kenyon (jointly), the Dealer, or partner(s) in the dealership, or representative(s) of the Dealer who actively and substantially participate(s) in the ownership and/or operation of the dealership. The individual or individuals designated shall be responsible for any act or omission of any of Dealer's agents or employees which may be contrary to the purposes and objectives of this Agreement or the obligations of Dealer hereunder. Dealer shall not transfer nor assign this Agreement or any right or obligation hereunder nor make nor suffer to be made any substantial change in the ownership, financial interests or active management of Dealer.

Petitioners' Exhibit No. 24—(Continued)

Fourth: This Agreement shall continue in force and govern all relations and transactions between the parties hereto for a term expiring October 31, 1949. At the end of such term, this Agreement shall automatically terminate without notice or action on the part of either party unless sooner terminated as hereinafter provided.

Fifth: This Agreement is not valid until and unless executed by the General Manager, General Sales Manager, an Assistant General Sales Manager, a Regional Manager, an Assistant Regional Manager, or Zone Manager of the Chevrolet Motor Division—General Motors Corporation.

Form No. GSD-202-Chevrolet-48

Identification No. 48-1103

Chevrolet Motor Division—General Motors
Corporation

Terms and Conditions—Direct Dealers

The following Terms and Conditions have by reference been incorporated in and made a part of the Selling Agreement which shall apply to and govern all transactions, dealings and relations between the parties:

Selling Rights, Terms and Conditions of Sale

1. Exclusive Selling Privilege

For so long a time as Dealer shall continue to sell new Chevrolet motor vehicles and chassis in a manner and to an extent and quantity satisfac-

Petitioners' Exhibit No. 24—(Continued)
 tory to Seller and while this Agreement shall be and remain in effect, Seller shall not grant to any other or different person, firm, or corporation the privilege of selling new Chevrolet motor vehicles and chassis in Dealer's territory unless Seller, in this Agreement, designates said territory or any part thereof as non-exclusive.

2. Seller's Reserved Rights

A. Non-exclusive Rights

Seller shall have the right to sell directly or through any division or subsidiary of General Motors Corporation any Chevrolet automotive products, either directly or through such distributors or dealers as it may designate, to any of the following classes of customers without obligation or liability to Dealer, to wit:

(1) The United States or any state government or any foreign government, or any municipal corporation or any political subdivision, department, bureau or instrumentality of any such government.

(2) The America Red Cross.

(3) Any division or subsidiary of General Motors Corporation.

(4) Employes of General Motors Corporation and its subsidiaries.

(5) Diplomatic representatives of foreign nations.

B. Exclusive Rights

Seller reserves the exclusive right to sell any Chevrolet automotive products, directly or through

Petitioners' Exhibit No. 24—(Continued)

such distributors or dealers as it may designate to manufacturers of ambulances, invalid coaches, funeral cars, busses, or other commercial vehicles.

* * * * *

Operating Requirements**12. Dealer's Personal Services**

Each person named in Paragraph Third of this Agreement shall devote his full time, attention, and energy to the conduct of Dealer's business hereunder.

13. Dealer's Place of Business Satisfactory to Seller

Dealer will maintain a place of business including salesroom, service station, parts and accessories facilities, and used car facilities satisfactory to Seller and will maintain the business hours customary in the trade. Seller shall have the right at all reasonable times in business hours to inspect said place of business.

Dealer will not move to or establish a new location, branch sales office, branch service station or place of business including any used car lot or location without the prior written consent of Seller.

14. Building Service for Dealer

Seller will, upon request, but without liability to Dealer with respect thereto, furnish to Dealer a suggested building plan and layout, but such plan and layout will not be intended for use as a complete working plan and will be furnished solely as a suggestion.

15. Capital Requirements

Petitioners' Exhibit No. 24—(Continued)

Since the amount and structure of working capital and net worth required to handle properly the business to be conducted by Dealer hereunder depends upon many factors, including size of market, sales and service facilities required, anticipated volume and others and since Seller has set standards for dealer capital and net worth based on Seller's past experience, Dealer shall establish his owned net working capital and net worth in the respective amount and form specified by Seller. If the amount of owned net working capital or net worth or the way in which either is set up is now or hereafter inadequate in Seller's estimation for the proper handling of Dealer's business, Dealer will take the necessary steps to meet Seller's applicable requirements within the time determined by Seller.

16. Accounts and Records

A. Uniform Accounting System

It is to the mutual interests of Seller and Dealer that uniform accounting systems and practices be maintained by dealers in order that Seller may develop standards of operating performance which will enable dealers to obtain the most satisfactory results from the sales potentials assigned to them and which will enable Seller to prepare composite dealer profit statements periodically to guide Seller in formulating policies beneficial to the dealers' interests.

Accordingly, Dealer will use and keep up to date at all times a satisfactory uniform accounting sys-

Petitioners' Exhibit No. 24—(Continued)

tem designated by Seller and will furnish to Seller, by the tenth of each month, a complete and accurate financial and operating statement with supporting data covering the preceding month's operations, showing the true and actual condition of Dealer's business. Dealer will maintain said system in strict accordance with the Accounting Manual prescribed by Seller.

B. Examination of Accounts and Records

In order to assure the maintenance of a uniform accounting system and practices, Dealer will permit an examination of his accounts and records to be made by a person or persons, either in the employ of Seller or acceptable to Seller, at such time or times as Seller may designate. A copy of the report of such examination will be furnished to both Seller and Dealer.

17. Satisfactory Sale of Motor Vehicles

Dealer shall develop to Seller's satisfaction the territory herein assigned to him for the resale of Chevrolet motor vehicles and chassis.

18. Sales Staff

Dealer shall maintain a staff of salesmen and a selling and customer relations organization adequate to take care of the sales potential of the area served by Dealer.

19. Sales and Service Records

In furtherance of the purposes, objectives, and obligations provided for in this Agreement, Dealer will keep complete and up-to-date records regarding the sale and servicing of new Chevrolet motor ve-

Petitioners' Exhibit No. 24—(Continued)

hicles and chassis and will permit Seller at all reasonable times in business hours to inspect such records.

20. Customer Complaints

Dealer will receive, investigate and handle all complaints received from customers or prospective customers with a view to protecting the goodwill of Seller and Dealer in the sale of Chevrolet products.

21. Price to Retail Purchaser

A. Maximum Price

Seller will establish Advertised Delivered Prices on new Chevrolet motor vehicles and chassis at Flint, Michigan, and it is the desire of Seller that all retail customers wherever located be able to purchase such vehicles at not more than these prices, plus transportation charges and the retail installed prices of any optional equipment and accessories selected by the retail purchaser, all as shown in the current sheet of Suggested Maximum Retail Delivered Prices issued to Dealer by Seller from time to time, plus applicable taxes, if any.

Dealer will cooperate with Seller in advertising delivered prices in Dealer's town and will inform retail purchasers of such prices, and will give them itemized invoices covering the details of their purchases.

B. Right of Retail Purchaser to Buy a New Car Without Purchasing Optional Equipment or Accessories

Dealer recognizes that a retail customer has the right to purchase new Chevrolet motor vehicles

Petitioners' Exhibit No. 24—(Continued)

without being required to purchase any optional equipment or accessories and Dealer therefore will either remove any optional equipment or accessories which such purchaser does not want, or will immediately order a new Chevrolet motor vehicle without such optional equipment or accessories.

C. Representation as to Transportation Charges

Dealer shall not make any statement intended to lead any purchaser to believe that a greater portion of the selling price of a new Chevrolet motor vehicle or chassis represents transportation charges and Factory Handling Charges than the amounts of such items actually charged to and paid for by Dealer.

* * * * *

C. Adjustments on Sales Outside Territory: Overseas

If a new Chevrolet motor vehicle, chassis or demonstrator is sold by an authorized Chevrolet dealer to a person, firm or corporation whose actual residence, or in case of commercial cars, whose place of business is not in any of the United States, the District of Columbia or Alaska, but is within the territory of the Overseas Division, the selling dealer shall pay as liquidated damages to Seller for disbursement to such Overseas Division, the sum of Thirty-five Dollars (\$35.00) or Fifty-five Dollars (\$55.00) depending on whether voluntary payment is made within forty-eight (48) hours as provided in the previous sub-paragraph B hereof except in the following cases:

Petitioners' Exhibit No. 24—(Continued)

(1) When the purchaser, at the time of such sale, owns or leases and is then occupying or maintaining a residence within the security area of the selling dealer.

(2) When the purchaser is a bona fide tourist in the United States and purchases said motor vehicle, chassis or demonstrator for use in the United States and secures a license therefor at the selling dealer's location.

(3) When the purchaser is in the diplomatic corps of the country of which he is a citizen and is assigned to duty in the United States at the time of such sale.

Claims by the Overseas Division may be filed at any time within four (4) months from the date of the delivery of said motor vehicle, chassis or demonstrator to such purchaser.

In the event that any Chevrolet dealer located in any of the United States, the District of Columbia or Alaska, shall file claim involving the sale of a new Chevrolet motor vehicle, chassis or demonstrator by said Overseas Division, Seller shall investigate said claim and if in Seller's opinion said claim is just, Seller shall make payment to dealer subject to and in accordance with the provisions of sub-paragraph B hereof.

D. Construction

The decision of Seller on all matters in connection with claims hereunder including the purchaser's actual residence and the classification of the motor vehicle, chassis, or demonstrator in-

Petitioners' Exhibit No. 24—(Continued)

involved, shall be final and conclusive on all parties concerned.

The term "residence", as used herein, shall mean the actual residence of the purchaser of passenger cars for non-commercial purposes and the actual place of business of the purchaser of trucks and passenger cars for commercial purposes as of the date of the sale. All facts relating and pertinent to the question of residence, including occupancy, point of use of such motor vehicle, shall be taken into consideration so that the actual and true place of residence or place of business, as the case may be, may be determined.

Claims filed under this Paragraph 22 will be decided against any dealer who brings to the attention of the purchaser of the motor vehicle involved in said claim the fact that such claim has been filed or who involves such owner in the matter in any way.

The term "dealer" herein shall include associate dealers as well as direct dealers.

23. Care of Owner

Recognizing the importance of owner goodwill, Dealer will furnish prompt and satisfactory service at reasonable cost to Chevrolet owners. In furtherance thereof Dealer will:

A. Conditioning of New Motor Vehicles

Condition each new motor vehicle and chassis before delivery, in accordance with Seller's pre-delivery inspection schedule.

Petitioners' Exhibit No. 24—(Continued)

B. Owner's Service Policy

Execute and deliver to each person who purchases a new Chevrolet motor vehicle or chassis from Dealer, an "Owner's Service Policy," on forms furnished by Seller as amended from time to time. Dealer will promptly perform and fulfill all the terms and conditions of said Policy.

C. Stock of Parts

Carry in stock at all times during the life of this Agreement an adequate number and assortment of parts and accessories to render proper service to owners of Chevrolet motor vehicles and chassis in Dealer's zone of influence.

D. Representation as to Parts

Not sell, offer for sale, or use in the repair of Chevrolet motor vehicles and chassis as genuine new Chevrolet repair parts, any part or parts which are not in fact genuine new Chevrolet repair parts as defined in sub-paragraph A of Paragraph 11 hereof.

E. Special Tools

Buy such special tools developed by Seller, as Seller shall deem necessary for Dealer to render proper service to owners. Further, Dealer authorizes and directs Seller to ship or cause to be shipped to Dealer in advance of delivery of new models, such special tools, the cost of which shall not exceed One Hundred Dollars (\$100.00), as Seller deems essential to service such new models properly. Dealer will pay for such new-model tools promptly on receipt thereof.

Petitioners' Exhibit No. 24—(Continued)

F. Mechanical Staff

Employ a sufficient number of competent mechanics to meet adequately the service requirements of the Chevrolet owners in Dealer's zone of influence.

G. Flat Rate System

Install the Chevrolet Flat Rate System of time allotments for service work as recommended and furnished by Seller and charge Seller for policy, warranty, and any other work performed by Dealer for Seller's Account on the basis of such time allotments and at one-half ($\frac{1}{2}$) of the labor rates related thereto, as agreed upon with Seller.

H. Warranty Adjustment

Install any part or parts furnished by Seller under the warranty set forth in Paragraph 10 hereof on motor vehicles sold by Dealer without expense to the owner of such vehicles and Seller will, if the replaced part is returned to and found by Seller to be defective, pay or credit to Dealer one-half ($\frac{1}{2}$) of the flat rate charge for installing the new part or parts according to the Flat Rate System of time allotments and labor charges then in effect in Dealer's business as provided in subparagraph G above.

I. Customer Relationship

Make every reasonable effort to satisfy owners of Chevrolet motor vehicles and chassis in his territory, or, if Dealer is on a non-exclusive basis, to satisfy all persons purchasing Chevrolet motor vehicles and chassis from Dealer, and in pursuance

Petitioners' Exhibit No. 24—(Continued)
thereof establish regular contact either by correspondence or personal interview, with such owners or purchasers. All complaints received by Dealer which cannot be readily remedied, shall be promptly reported to Seller with the name of the owner making same.

J. Inspection of Facilities

Permit Seller to inspect and check over Dealer's service facilities and stock of parts and accessories at any reasonable time in business hours.

24. Signs

Dealer will purchase, erect, and maintain at his expense the following signs as hereinafter specified:

A. A standard product electric sign in a conspicuous place outside his showrooms provided the erection thereof is not prohibited by municipal ordinance or statute.

B. A standard authorized service sign in a suitable location on the outside of Dealer's place of business.

C. Such other signs as are necessary to advertise his business properly on a basis mutually satisfactory to both Seller and Dealer.

25. Chevrolet Name and Trade-Marks

A. Seller's Exclusive Rights

Seller is entitled to the use of the word "Chevrolet", and the Chevrolet trade-mark or trade-marks, including the distinctive outline or form thereof, as applied to motor vehicles and chassis, parts and accessories, and of the goodwill attached thereto.

Petitioners' Exhibit No. 24—(Continued)

B. Discontinuance of Use Upon Termination

If the word "Chevrolet" is used in the name under which Dealer's business is conducted or the word "Chevrolet" or any Chevrolet trade-mark, including the distinctive outline or form thereof, is used in any sign or advertising displayed by Dealer, Dealer will, upon termination of this Agreement, or upon the request of Seller, discontinue the use of the same. Thereafter Dealer will not use, either directly or indirectly, in connection with any motor vehicle business, any Chevrolet trade-mark, including the distinctive outline or form thereof, the word "Chevrolet" or any other name, title, expression or mark so nearly resembling the same as to be likely to lead to confusion or uncertainty or to deceive the public. If Dealer is a corporation in whose corporate name the word "Chevrolet" is used, Dealer will promptly have the corporate name changed, eliminating said word "Chevrolet" therefrom.

C. Dealer's Liability for Failure to Discontinue Use

If Dealer, after termination of this Agreement, shall refuse or neglect to keep and perform the provisions of sub-paragraph B hereof, Dealer shall reimburse Seller for all costs, attorneys' fees and other expenses incurred by Seller in connection with legal action to require Dealer to comply therewith.

* * * * *

Termination of Agreement

28. Termination

A. Dealer may terminate this Agreement by writ-

Petitioners' Exhibit No. 24—(Continued)

ten notice of termination delivered to Seller, such termination to be effective one (1) month after receipt by Seller of such notice.

B. Termination for Cause

(1) If Seller or Dealer requires a license for the performance of any obligation hereunder or in connection herewith in any state or jurisdiction where this Agreement is to be performed, then and in such event if either of the parties hereto shall fail to secure or maintain a license or renewal thereof, or if such license shall be suspended or revoked, either party may immediately terminate this Agreement and all orders theretofore given to Seller and not delivered, by giving to the other party written notice of such termination.

(2) If Dealer does not develop the territory herein assigned to him to the satisfaction of Seller or does not conduct his business in accordance with any requirement set forth in Paragraphs 12 and 13, Paragraphs 15 to 20, inclusive, or Paragraph 23 hereof, to the satisfaction of Seller, Seller may terminate this Agreement by giving to Dealer written notice of termination to be effective three (3) months after receipt thereof.

(3) In the event that Dealer, after receiving notice from Seller of termination pursuant to subsection (2) above, or in the event that Dealer after having knowledge that he will not be offered a new Selling Agreement by Seller to become effective upon the automatic expiration of this Selling Agreement, enters into a Selling Agreement for a

Petitioners' Exhibit No. 24—(Continued)

different make of motor vehicle, this Agreement and all obligations hereunder, including orders theretofore given to Seller but not delivered, shall terminate immediately, without notice, anything contained in this Agreement to the contrary notwithstanding.

(4) Seller may terminate this Agreement immediately by delivering to Dealer or his representative written notice of such termination in the event of the happening of any of the following:

a. Death, incapacity, or the removal, resignation, withdrawal, or elimination from the dealership for any reason of Dealer or any person named in Paragraph Third of this Agreement.

b. Any sale, transfer, relinquishment, voluntary or involuntary, by operation of law or otherwise, of any substantial interest in the direct or indirect ownership or management of the Dealer or dealership.

c. Any dispute, disagreement, or controversy between or among principals, partners, managers, officers or stockholders of Dealer which, in the opinion of Seller, may adversely affect the ownership, operation, management, business or interest of Dealer, dealership, or Seller.

d. Insolvency of Dealer; the filing of a voluntary petition in bankruptcy by Dealer; the filing of a petition to have Dealer declared bankrupt, provided it is not vacated within thirty (30) days from the date of filing; the appointment of a receiver or trustee for Dealer, provided such appointment is

Petitioners' Exhibit No. 24—(Continued)
not vacated within thirty (30) days from the date of such appointment; the execution by Dealer of an assignment for the benefit of creditors; the conviction of Dealer or any principal officer, or manager of Dealer of any crime which, in the opinion of Seller, may adversely affect the ownership, operation, management, business or interest of Dealer, dealership, or Seller.

(5) Seller or Dealer may terminate this Agreement immediately by delivering to the other party written notice of termination in the event that the other party violates or fails to comply with any term or provision of this Agreement for which termination is not otherwise specifically provided for in this Paragraph 28.

29. Transactions After Termination

A. Dealer's Obligations

Any termination of this Agreement shall not release Dealer from the obligation to pay any sum which may then be owing Seller, or from the obligation to pay for any special motor vehicle, chassis or equipment for same as defined in sub-paragraph C of Paragraph 3 hereof which may have been ordered by Dealer and not shipped by Seller prior to such termination.

B. Dealer's Orders

In the event of termination of this Agreement pursuant to the provisions of Paragraph 28A, 28B (2) or Paragraph 28B (4), sub-section a, b or c thereof, but not otherwise, Seller will use its best efforts to furnish Dealer with Chevrolet motor

Petitioners' Exhibit No. 24—(Continued)

vehicles and chassis to fill his bona fide retail orders on hand on the date of termination not to exceed, however, the total number of motor vehicles and chassis delivered to Dealer by Seller during the three (3) months immediately preceding the date of termination, subject, however, to the following further conditions and limitations:

(1) Within ten (10) days following termination, Dealer shall deliver to Seller a written schedule of Dealer's bona fide retail orders on hand on the date of termination. Such schedule shall show the name and address of each retail customer and the details with respect to each motor vehicle ordered, including model, body type, color and accessories and shall specify each bona fide order against which Dealer desires Seller to make delivery up to the three (3) months' total number of motor vehicles required to be delivered by Seller as above described. Those orders for which delivery is thus specified by Dealer, when approved by Seller, shall constitute Dealer's Schedule of Termination Deliveries. No change or substitution may be made by Dealer in such Schedule of Termination Deliveries and Seller shall not be obligated to make deliveries of any motor vehicle to Dealer except as specified therein. In the event of Dealer's failure to deliver to Seller the detailed schedule above required, Dealer shall have no further rights hereunder.

(2) Dealer shall accept any motor vehicle required to be delivered by Seller hereunder against

Petitioners' Exhibit No. 24—(Continued)

Dealer's Schedule of Termination Deliveries immediately upon notification by Seller of the availability to Dealer of such vehicle. In the event of his failure to do so, Dealer shall have no further right to receive such vehicle or any other vehicle in lieu thereof.

(3) Vehicles shall be delivered by Seller hereunder in substantial accordance with the schedule and basis of delivery in effect with respect to other dealers in the same zone at the time of Dealer's termination.

(4) Dealer shall give Seller notice immediately upon cancellation for any reason of any retail order set forth in Dealer's Schedule of Termination Deliveries.

(5) In the event of the cancellation for any reason of any retail order set forth in Dealer's Schedule of Termination Deliveries before delivery by Seller of a motor vehicle to apply against such order, Seller shall be released from any obligation to make delivery of such vehicle.

(6) Dealer shall provide proper and adequate facilities in accordance with the terms and provisions of this Agreement to effect the delivery and handling of motor vehicles to be supplied under this sub-paragraph 29B.

C. Effect of Transactions After Termination

The acceptance of orders from Dealer or the continuance of sale of products to Dealer or any other act of Seller after termination of this Agreement shall not be construed as a renewal of this Agree-

Petitioners' Exhibit No. 24—(Continued)

ment for any further term nor as a waiver of the termination.

* * * * *

General Provisions

32. Dealer Not Made Agent or Legal Representative of Seller

This Agreement of which these Terms and Conditions are a part does not constitute Dealer the agent or legal representative of Seller for any purpose whatsoever. Dealer is not granted any express or implied right or authority to assume or to create any obligation or responsibility in behalf of or in the name of Seller or to bind Seller in any manner or thing whatsoever.

33. Responsibility for Dealer's Commitments

Dealer shall be solely responsible for any and all obligations or liabilities incurred or assumed by him in the performance hereof, and Seller shall not be held responsible in any manner therefor, irrespective of any suggestion or recommendation with respect thereto by Seller or any of its employes or representatives unless Seller has agreed to assume the responsibility, either in whole or in part, by written agreement executed by its General Manager or its General Sales Manager, except insofar as it is specifically provided otherwise in this Agreement.

34. Notices

Any notice required to be given by either party to the other hereunder or in connection herewith shall be in writing and delivered personally or by

Petitioners' Exhibit No. 24—(Continued)

mail. Notices to Dealer shall be directed to Dealer, or his representative at Dealer's place of business; notices to Seller shall be directed to the Zone Manager of the area in which Dealer is located.

35. No Implied Waivers

The failure of either party at any time to require performance by the other party of any provision hereof shall in no way affect the full right to require such performance at any time thereafter. Nor shall the waiver by either party of a breach of any provision hereof constitute a waiver of any succeeding breach of the same or any other such provision nor constitute a waiver of the provision itself.

36. Applicable Law

This Agreement is to be governed by and construed according to the laws of the State of Michigan. If, however, any provision herein in anywise contravenes the laws of any state or jurisdiction where this Agreement is to be performed, such provision shall be deemed not to be a part of this Agreement therein.

37. Sole Agreement of Parties

This Agreement shall be binding upon Seller when signed by the General Manager, General Sales Manager, an Assistant General Sales Manager, a Regional Manager, an Assistant Regional Manager, or Zone Manager of Seller. However, no change in, addition to, or erasure of, any printed portion of this Agreement (except the filling in of blank lines) shall be valid or binding upon Seller

Petitioners' Exhibit No. 24—(Continued)
unless it is expressly declared to be a modification of this Agreement and is approved as such in writing by the General Sales Manager of Seller.

There is no other agreements or understandings, either oral or in writing, between the parties affecting this Agreement or relating to the sale or servicing of Chevrolet motor vehicles, chassis, parts or accessories. This Agreement cancels and supersedes all previous agreements between the parties hereto.

PETITIONERS' EXHIBIT No. 25

Capital Chevrolet Co. November 1, 1948
1300 K Street, Sacramento, Calif.

Gentlemen:

Please take notice that the Capital Standard Agreement dated 8-15-47 heretofore executed by you shall continue in full force and effect and shall constitute a part of the new Chevrolet Selling Agreement entered into with you this date provided:

1. If such Capital Standard Agreement was executed by you prior to November 1, 1947, it shall be and the same is hereby amended to read and apply to the new Chevrolet Selling Agreement as follows:

a. In the first paragraph on Page 3, the reference to "Paragraph 13" is amended to read "Para-

graph 15 (in Texas Selling Agreement 'Paragraph 14')".

b. In the second paragraph on Page 3, the reference to "Subparagraph 24B (2)" is amended to read "Subparagraph 28B (2) (in Texas Selling Agreement 'Subparagraph 26B (2)')".

c. In the paragraph on Page 5, the reference to "Subparagraph 24B (5)b" is amended to read "Subparagraph 28B (4)b (in Texas Selling Agreement 'Subparagraph 26B (4) b')".

2. If such Capital Standard Agreement was executed by you subsequent to October 31, 1947 but prior to November 1, 1948, it shall be and the same is hereby amended to read and apply to the new Chevrolet Selling Agreement as follows:

a. In the first paragraph on Page 3, the reference to "Paragraph 14" is amended to read "Paragraph 15 (In Texas Selling Agreement 'Paragraph 14')".

b. In the second paragraph on Page 3, the reference to "Subparagraph 24B (2) (in Texas Selling Agreement 'Subparagraph 23B (2)')'" is amended to read "Subparagraph 28B (2) (in Texas Selling Agreement 'Subparagraph 26B (2)')".

c. In the paragraph on Page 5, the reference to "Subparagraph 24B (4)b (in Texas Selling Agreement 'Subparagraph 23B (4)b')'" is amended to read "Subparagraph 28B (4)b (in Texas Selling Agreement 'Subparagraph 26B (4)b')".

Will you please indicate your understanding and agreement to the foregoing by signing the attached receipt and returning it promptly to your Zone Office.

Very truly yours,

T. H. Keating,
General Sales Manager
Chevrolet Motor Division
General Motors Corporation

/s/ By A. W. Strang, Zone Manager

(Dealer should file this letter with his New Selling Agreement.)

GENERAL MOTORS
DEALERS CAPITAL STANDARD PROGRAM



CAPITAL STANDARD AGREEMENT

WITH

Dealer CAPITOL CHEVROLET COMPANY

Street Address 1300 K STREET

City SACRAMENTO (Zone No.) CALIFORNIA State

Dealer's Retail Planning Potential 513 Zone OAKLAND, CALIF.

SUPPLEMENTAL AGREEMENT by and between the undersigned Dealer, hereinafter called "the Dealer" and Chevrolet Motor Division, General Motors Corporation, hereinafter called "Chevrolet" supplementing current Chevrolet Selling Agreement in effect between the parties.

WITNESSETH:

WHEREAS, the parties desire to interpret and define the precise application to the Dealer's Business of the provisions and requirements of the aforesaid current Chevrolet Selling Agreement with regard to the Dealer's capital requirements and the ownership and management of the Dealer's business in consideration of which, among other things, Chevrolet heretofore offered and entered into such Selling Agreement with the Dealer; NOW, THEREFORE, it is agreed between the parties that the aforesaid provisions and requirements of the Selling Agreement more specifically referred to hereafter shall be interpreted to comprehend the following agreements by and warranties to Chevrolet on the part of the Dealer:

1. Dealer Capital Standard Program—The subject Dealer agrees to the following Dealer Capital Standard Program:

LINE	CASH STANDARD—One Average Month Total Expenses	Average Month		Agreed Standards
		1941	Cur. Year	
1	Average Month Variable Selling Expenses	4337	4760	5700
2	Average Month Fixed Overhead Expenses	10807	21400	23000
3	STANDARD—CASH—TO EQUAL AVERAGE MONTH TOTAL EXPENSES	15144	26160	28700

RECEIVABLES

STANDARD—One Average Month Investment

4	Average Month Notes Receivable	2154	6997	60000
5	Average Month Accounts Receivable	16644	82248	50000
6	STANDARD—AVERAGE MONTH TOTAL RECEIVABLES	18798	89245	110000

COMPANY CARS AND NEW CARS

STANDARD—Number of Company Cars agreed upon by Chevrolet and the Dealer and One Average Month Stock of New Cars and Trucks based on Schedule "A" below. Total Dollar Inventories of Company Cars and New Cars shall be based on the current year-to-date New Car and Truck Cost of Sales Average per unit, including Freight and Handling. The Dealer's equity in Company Car and New Car Inventories shall be not less than either (a) 80% when based on Retail Planning Potential Volume, or (b) 10% when based on Double Retail Planning Potential Volume, plus the indicated increase in the average month Used Car Dollar Inventory on the basis of Double Retail Planning Potential Volume, whichever is greater.

	Average Month		Standard Based on	
	1941	Cur. Year	Retail Planning Potential Volume	Double Retail Plan Potential Volume
7	Average Month No. Passenger Company Cars	-	5	9
8	Average Month No. Commercial Company Cars	-	1	3
9	AVERAGE MONTH TOTAL NO. COMPANY CARS	12	6	12
10	Dealer's Average Month Retail Planning Potential		43	86
11	Percentage Required for Average Month Stock (Secure from Schedule "A" Below)		60 %	50 %
12	AVERAGE MONTH NEW CAR UNIT INVENTORY (Line 10 x Line 11)		26	43
13	TOTAL AVERAGE MONTH COMPANY CAR AND NEW CAR UNIT INVENTORIES (Total Lines 9 and 12)		32	55
14	Current Year-to-Date Average New Car Unit Cost of Sale		1132	1132
15	TOTAL COMPANY AND NEW CAR AVERAGE MONTH DOLLAR INVENTORIES (Line 13 x Line 14)		36224	62260
16	Dealer's Minimum Percentage of Equity		80 %	10 %
17	Dealer's Minimum Equity (Line 15 x Line 16)		28979	6226
18	Indicated Increase in Used Car Dollar Inventory based on Double Retail Planning Potential Volume (Copy from Line 24)			31898
19	STANDARD—MINIMUM COMPANY CAR AND NEW CAR EQUITY—WHICHEVER IS GREATER (Total Lines 17 and 18)		(Whichever is Greater) 28980	38124

SCHEDULE "A"—NEW CAR AND TRUCK STOCK AS PER CENT OF AV. MONTH RETAIL PLANNING POTENTIAL

Average Month Retail Planning Potential	1 to 4	5 to 12	13 to 17	18 to 21	22 to 25	26 to 29	30 to 33	34 to 38	39 to 42	43 to 46	47 to 50	Over 50
Percentage to be Applied	125%	100%	95%	90%	85%	80%	75%	70%	65%	60%	55%	50%

	USED CARS	Standard Based on Retail Planning Potential Volume
LINE	STANDARD—One Average Month Stock to be determined as follows: Dealer's Average Month Retail Planning Potential (Line 10 above)—multiplied by Dealer's 1941 Selling Ratio—multiplied by the Dealer's 1941 Used Car Average Selling Price increased by 50%.	
20	Average Month Retail Planning Potential (Line 10 above)	43
21	Dealer's 1941 Selling Ratio (Used to New)	1.9
22	Indicated Average Month Used Car Unit Inventory (Line 20 x Line 21)	82
23	Dealer's 1941 Used Car Average Selling Price Increased by 50%	389
24	STANDARD—AVERAGE MONTH USED CAR DOLLAR INVENTORY (Line 22 x Line 23)	31898

PARTS

STANDARD—Three Months Supply based on Current Year-to-Date Average Month Total Parts Cost of Sales.

25	Current Year-to-Date Average Month Total Parts Cost of Sales	17923
26	STANDARD—THREE MONTHS SUPPLY OF PARTS (Line 25 x 3)	53769

ACCESSORIES

STANDARD—Two Months Supply of Accessories Other Than with New Cars Plus One Month Supply of Accessories with New Cars.

27	Current Year-to-Date Average Month Cost of Sales—Accessories Other Than with New Cars	1134
28	STANDARD—TWO MONTHS SUPPLY (Line 27 x 2)	2268
29	Current Year-to-Date Average Cost of Sales of Accessories with New Cars—Per New Car and Truck Sold Retail	76.71
30	STANDARD—ONE MONTH SUPPLY (Line 29 x Retail Planning Potential on Line 10)	3299
31	STANDARD—TOTAL ACCESSORIES (Total Lines 28 and 30)	5567

PREPAID EXPENSES

STANDARD—One Average Month Investment.

32	STANDARD—CURRENT YEAR-TO-DATE AVERAGE MONTH PREPAID EXPENSES	7595
----	--	------

ALL OTHER CURRENT ASSETS

STANDARD—One Average Month Investment.

33	STANDARD—CURRENT YEAR-TO-DATE AVERAGE MONTH TOTAL OF ALL OTHER INVENTORIES NOT COVERED ABOVE (Excl. Cash, Securities and Disc. Rec.)	11059
34	TOTAL CURRENT ASSETS (Total of Lines 3-6-19-24-26-31-32-33)	286712

LESS CURRENT LIABILITIES

35	One Month Supply of Parts (Amount Shown on Line 25)	17923
36	One Month Supply of Accessories (Total of Lines 27 and 30)	4433
37	One Month Supply of Any Miscellaneous Inventories Purchased on Open Account	3322
38	STANDARD—DEDUCTIBLE LIABILITIES (Total Lines 35-36-37)	25678

OWNED NET WORKING CAPITAL STANDARD

(Line 34 Minus Line 38)

261034

Page 3

LINE	FIXED AND DEFERRED ASSETS	
40	Dealer's Current Equity in Land and Buildings Used in the Business	—
41	Amount Not Less Than Current Total Net Book Value of All Other Fixed and Deferred Assets Used in the Business	39499
42	Total Net Value of Non-Franchise Investments	—
43	STANDARD—FIXED AND DEFERRED ASSETS (Total Lines 40, 41 and 42)	39499
44	TOTAL OWNED CAPITAL STANDARD (Total Lines 39 and 43)	300533

RECAP OF STANDARDS

LINE	NET WORKING CAPITAL		From Line	FIXED AND DEFERRED ASSETS		From Line	TOTAL OWNED CAPITAL
45	Cash	3	28700				
46	Receivables	6	110000				
47	Company Cars and New Cars	19	38124				
48	Used Cars	24	31898				
49	Parts	26	53769				
50	Accessories	31	5567	Land and Buildings	40	—	
51	Prepaid Expenses	32	7595	Other Fixed and Deferred Assets	41	39499	
52	All Other Current Assets	33	11059	Non-Franchise Investments	42	—	
53	TOTAL CURRENT ASSETS	34	286712				
54	Less: Liabilities	38	25678				
55	STANDARDS OWNED NET WORKING CAPITAL	39	198,000 261034	OWNED FIXED AND DEFERRED ASSETS	43	40820 39499	(From Line 44) 238,000 300533
56	ACTUAL OWNED CAPITAL AS OF 7/31 1947		220122			39499	259621
57	ADDITIONAL OWNED CAPITAL REQUIRED		40912			—	40912

The foregoing Chevrolet Dealer Capital Standard Program for the subject Dealer hereby agreed to by the undersigned parties is made in accordance with and supplements Paragraph 13 of the current Chevrolet Selling Agreement in accordance with said Paragraph, moreover, it is agreed between the undersigned parties that the amounts of Owned Net Working Capital and Total Owned Capital required for the proper operation of the subject dealership are \$261034 and \$300533, respectively, and that until such time as the actual Owned Net Working Capital and/or Total Owned Capital equal or exceed such amounts, 50% of Net Profits (after Income Tax applicable to the business) are to be retained in the dealership business and that thereafter the Owned Net Working Capital and Total Owned Capital will be maintained at such amounts as the minimums, provided, nevertheless, the above required minimum Owned Net Working Capital and required minimum Total Owned Capital must in no event be attained or supplied by Dealer on or before August 15, 1948, and thereafter maintained.

The Dealer's failure to comply with this requirement constitutes a ground for termination of the current Chevrolet Selling Agreement pursuant to Subparagraph 24B(2) of the provision thereof entitled "Termination for Cause."

In the event that the date specified is beyond the date of termination of the current Chevrolet Selling Agreement pursuant to any provision thereof, such fact shall not be deemed a commitment on the part of Chevrolet to continue the current Selling Agreement or to offer Dealer a new Selling Agreement for a period beyond the termination date.

2. Warranty as to Statement of Net Worth—The subject Dealer warrants the following to be a true and correct reconciliation of net worth representing the dealership status as of July 31 1947

RECONCILIATION OF NET WORTH (Enter All Amounts in Nearest Even Dollars)			DEALERSHIP IS CURRENTLY OPERATED AS A:	
1	Cash and Equivalents	143454		
2	Securities	---		
3	Discount Receivable	4325		
4	TOTAL	147779	Proprietorship	<input type="checkbox"/>
5	Less: Accts. Payable—Trade Creditors	22698	Partnership	<input type="checkbox"/>
6	Receivable Credit Balances	45814	Corporation	<input checked="" type="checkbox"/>
7	Service Contract Deposits	3574		
8	Other Accounts Payable	1151		
9	Accrued Liabilities	33883		
10	Reserve for Income Taxes (Corp.)	60874		
11	Other Reserves & Bonus	51648		
12	TOTAL	158766	*****	
13	ADJUSTED CASH POSITION (Line 4 Minus Line 12)	→ 71861	NET WORTH SHOWN ON LINE 51 BELOW CURRENTLY CONSISTS OF:	
14	New Cars (Incl. F & H) Units (34)	40321		
15	Company Cars Units (5)	4908		
16	Total	45129		
17	Less: Due on New Cars and Company Cars	24609		
18	NET EQUITY NEW AND COMPANY CARS	20520	Proprietorship or Partnership	
19	Special Bodies and Truck Equipment	4388		
20	Parts	134482		
21	Accessories	16399		
22	Gas, Oil and Grease	420	Investment Accounts \$	
23	Paint Materials	652		
24	Total	176861	Drawing Accounts \$	
25	Less: Notes Payable (Except on Cars)	---		
26	NET EQUITY NEW MERCHANDISE	→ 176861	Current Year Net Profit \$	
27	Receivables	66753		
28	Less: Reserve for Bad Debts	4634		
29	NET VALUE RECEIVABLES	→ 62119	Total Net Worth \$	
30	Used and Repos. Cars Units (66)	44439		
31	Less: Used Car Loans	---		
32	Used Car Reserve	8888	Corporation	
33	NET VALUE USED AND REPOSSESSED CARS	→ 35551	Capital Stock Out- standing \$ 85000	
34	Miscellaneous Inventories	→ 6813	Surplus \$ 75299	
35	Prepaid Expenses	→ 10639	Dividends \$ ---	
36	NET WORKING CAPITAL (Total Lines 13, 26, 29, 33, 34 and 35)	220122	Current Year Net Profit \$ 99321	
37	Less: Long-Term Liabilities (Excl. Bldg. Mtge.)	→ ---	Total Net Worth \$ 259621	
38	OWNED NET WORKING CAPITAL (Line 36 Minus Line 37)	220122		
39	Land and Buildings (Less Mtge. and Reserve)	---		
40	Mach. and Shop Equipment (Less Reserve)	8504		
41	Parts and Access. Equipment (Less Reserve)	9341		
42	Furniture and Fixtures (Less Reserve)	3000		
43	Service Cars (Less Reserve)	11132		
44	Leaseholds and Improvements (Less Amort.)	---		
45	NET VALUE FIXED ASSETS	→ 31977		
46	Officers Notes and Accounts	792		
47	Advances to Employees	6		
48	Other Deferred Assets	6724		
49	TOTAL DEFERRED ASSETS	→ 7522		
50	NON-FRANCHISE INVESTMENTS	→ ---		
51	NET WORTH (Total Lines 38, 45, 49 and 50)	259621		

3. **Warranty as to Ownership and Management**—The subject Dealer warrants that the following constitutes the management and the entire direct and indirect ownership of the dealership as of the date hereof and agrees that any deviation from the same constitutes sufficient cause for the immediate termination by Chevrolet Motor Division, General Motors Corporation, of the Chevrolet Selling Agreement currently in effect between the parties, pursuant to Subparagraph 24B(5)b of the provision thereof entitled "Termination for Cause."

(1) Name of Individuals, Partners or Stockholders Having Ownership or Management Interest (Mark "X" Opposite Persons Named in Paragraph Third of Selling Agreement)	(2) Title If Any	(3) Amount of Investment if a Partnership or Proprietorship	If a Corporation, Show the Number of Shares of Stock (Each Type) Owned by Each Stockholder			(7) If any of the Investment Shares in Column 1 or 2 has been borrowed, Show Name and Amount of Loan, and the Maturity Date of the Loan. If no loan is outstanding, State "None".
			No. Shares (4)	Type (5)	Book Value (6)	
P. Norman Phelps	Pres.		213	Common	\$65,058.	GM - L. L.
Alice Phelps	Secy.					\$15,000.
James A. Kanyon, Trustee for Patricia May Kanyon	Treas.		212	"	64,752.	None
J. A. E. Co. - A Nevada Corp.			170	"	51,924.	None
James A. Kanyon	Vice-Pres.		255	"	77,887.	None
Phillip J. Moffatt	Gen. Mgr.		See the J. A. E. Co.			J. A. E. Co.
			0			
TOTAL	XXXX		850		259,621.	

IN WITNESS WHEREOF, the parties have executed this Supplemental Agreement to the aforesaid Chevrolet Selling Agreement this

15th day of August, 1947

CAPITOL CHEVROLET COMPANY

Dealer Firm Name

By Thomas A. Kanyon
(Person named in Paragraph Third of Selling Agreement)

President

CHEVROLET MOTOR DIVISION
GENERAL MOTORS CORPORATION

By J. P. Kato
General Sales Manager

By M. J. Kato
Sales Manager

PETITIONERS' EXHIBIT No. 27

[Letterhead of Chevrolet Motor Division]

Capitol Chevrolet Company November 1, 1948
1300 K Street, Sacramento, California

Gentlemen:

In delivering to you herewith new Chevrolet Selling Agreement to be effective for the term commencing November 1, 1948, we direct your attention to the fact that our action is not to be regarded as evidence of satisfaction on our part with the operation of your dealership as to financial setup within the requirements of Paragraph 15 thereof. On the contrary, your operation is unsatisfactory in that all or part of the ownership of the dealership is held by a trust.

As you know, the Chevrolet Selling Agreement is a personal contract for a stated and limited term only and is dependent for its continuance during that term upon the direct relations by and between Chevrolet Motor Division and the dealership principal named in Paragraph Third thereof. In keeping with the nature of this Agreement and to facilitate the handling of operating details by and between Chevrolet Motor Division and the dealership principal on a basis permitting of control solely by the dealership principal and without actual or potential interference by any other party and also to insure the financial stability of the Chevrolet dealership organization for the mutual advantage of the Chevrolet dealership and of Chevrolet Motor Division, it is the desire and policy of Chevrolet

Motor Division that all ownership of the Chevrolet dealership be held directly by individuals approved by Chevrolet Motor Division.

The new Chevrolet Selling Agreement is herewith delivered to you, therefore, upon the express representation by you that action will be taken to effect the foregoing objective not later than April 30, 1949.

Will you please indicate your understanding accordingly by signing the attached carbon copy of this letter and return the same promptly to the undersigned with the executed copy of the new Chevrolet Selling Agreement.

Very truly yours,

T. H. Keating

General Sales Manager

Chevrolet Motor Division

General Motors Corporation

/s/ By A. W. Strang, Zone Manager

PETITIONERS' EXHIBIT No. 28

[Letterhead of Chevrolet Motor Division]

Capitol Chevrolet Company November 1, 1948
1300 K Street, Sacramento, California

Gentlemen:

In delivering to you herewith new Chevrolet Selling Agreement to be effective for the term commencing November 1, 1948, we direct your attention to the fact that our action is not to be regarded as evidence of satisfaction on our part with the opera-

tion of your dealership as to financial setup within the requirements of Paragraph 15 thereof. On the contrary, your operation is unsatisfactory in that all or part of the ownership of the dealership is held, in effect, by a holding company.

As you know, the Chevrolet Selling Agreement is a personal contract for a stated and limited term only and is dependent for its continuance during that term upon the direct relations by and between Chevrolet Motor Division and the dealership principal named in Paragraph Third thereof. In keeping with the nature of this Agreement and to facilitate the handling of operating details by and between Chevrolet Motor Division and the dealership principal on a basis permitting of control solely by the dealership principal and without actual or potential interference by any other party and also to insure the financial stability of the Chevrolet dealership organization for the mutual advantage of the Chevrolet dealership and of Chevrolet Motor Division, it is the desire and policy of Chevrolet Motor Division that all ownership of the Chevrolet dealership be held directly by individuals approved by Chevrolet Motor Division.

The new Chevrolet Selling Agreement is herewith delivered to you, therefore, upon the express representation by you that action will be taken to effect the foregoing objective not later than September 30, 1949.

Will you please indicate your understanding accordingly by signing the attached carbon copy of this letter and return the same promptly to the

The foregoing is hereby agreed to and accepted
this 1st day of November 1948.

Mid-Valley Chevrolet Company
/s/ By F. Norman Phelps

PETITIONERS' EXHIBIT No. 30

[Letterhead of Chevrolet Motor Division]

Mid-Valley Chevrolet Co.
San Bernardino, California

Nov. 1, 1948

Gentlemen:

In delivering to you herewith new Chevrolet Selling Agreement to be effective for the term commencing November 1, 1948, we direct your attention to the fact that our action is not to be regarded as evidence of satisfaction on our part with the operation of your dealership as to financial setup within the requirements of Paragraph 15 thereof. On the contrary, your operation is unsatisfactory in that all or part of the ownership of the dealership is held, in effect, by a holding company.

As you know, the Chevrolet Selling Agreement is a personal contract for a stated and limited term only and is dependent for its continuance during that term upon the direct relations by and between Chevrolet Motor Division and that the dealership principal named in Paragraph Third thereof. In keeping with the nature of this Agreement and to facilitate the handling of operating details by and between Chevrolet Motor Division and the dealership principal on a basis permitting of control

solely by the dealership principal and without actual or potential interference by any other party and also to insure the financial stability of the Chevrolet dealership organization for the mutual advantage of the Chevrolet dealership and of Chevrolet Motor Division, it is the desire and policy of Chevrolet Motor Division that all ownership of the Chevrolet dealership be held directly by individuals approved by Chevrolet Motor Division.

The new Chevrolet Selling Agreement is herewith delivered to you, therefore, upon the express representation by you that action will be taken to effect the foregoing objective not later than September 30, 1949.

Will you please indicate your understanding accordingly by signing the attached carbon copy of this letter and return the same promptly to the undersigned with the executed copy of the new Chevrolet Selling Agreement.

Very truly yours,

T. H. Keating
General Sales Manager
Chevrolet Motor Division
General Motors Corporation

/s/ By J. W. Steele, Zone Manager

The foregoing is hereby agreed to and accepted this 1st day of November 1948.

Mid-Valley Chevrolet Company
/s/ By F. Norman Phelps

PETITIONERS' EXHIBIT No. 31

[Letterhead of Chevrolet Motor Division]

Howell Chevrolet Co.,
Glendale, California

November 1, 1948

Gentlemen:

In delivering to you herewith new Chevrolet Selling Agreement to be effective for the term commencing November 1, 1948, we direct your attention to the fact that our action is not to be regarded as evidence of satisfaction on our part with the operation of your dealership as to financial setup within the requirements of Paragraph 15 thereof. On the contrary, your operation is unsatisfactory in that all or part of the ownership of the dealership is held by a trust.

As you know, the Chevrolet Selling Agreement is a personal contract for a stated and limited term only and is dependent for its continuance during that term upon the direct relations by and between Chevrolet Motor Division and the dealership principal named in Paragraph Third thereof. In keeping with the nature of this Agreement and to facilitate the handling of operating details by and between Chevrolet Motor Division and the dealership principal on a basis permitting of control solely by the dealership principal and without actual or potential interference by any other party and also to insure the financial stability of the Chevrolet dealership organization for the mutual advantage of the Chevrolet dealership and of Chev-

vrolet Motor Division, it is the desire and policy of Chevrolet Motor Division that all ownership of the Chevrolet dealership be held directly by individuals approved by Chevrolet Motor Division.

The new Chevrolet Selling Agreement is herewith delivered to you, therefore, upon the express representation by you that action will be taken to effect the foregoing objective not later than April 30, 1949.

Will you please indicate your understanding accordingly by signing the attached carbon copy of this letter and return the same promptly to the undersigned with the executed copy of the new Chevrolet Selling Agreement.

Very truly yours,

T. H. Keating
General Sales Manager
Chevrolet Motor Division
General Motors Corporation
/s/ By J. W. Steele, Zone Manager

The foregoing is hereby agreed to and accepted this 1st day of November 1948.

Howell Chevrolet Company
/s/ By F. Norman Phelps

PETITIONERS' EXHIBIT No. 32

[Letterhead of Chevrolet Motor Division]

Howell Chevrolet Co.,
Glendale, California

Nov. 1, 1948

Gentlemen:

In delivering to you herewith new Chevrolet Selling Agreement to be effective for the term commencing November 1, 1948, we direct your attention to the fact that our action is not to be regarded as evidence of satisfaction on our part with the operation of your dealership as to financial setup within the requirements of Paragraph 15 thereof. On the contrary, your operation is unsatisfactory in that all or part of the ownership of the dealership is held, in effect, by a holding company.

As you know, the Chevrolet Selling Agreement is a personal contract for a stated and limited term only and is dependent for its continuance during that term upon the direct relations by and between Chevrolet Motor Division and the dealership principal named in Paragraph Third thereof. In keeping with the nature of this Agreement and to facilitate the handling of operating details by and between Chevrolet Motor Division and the dealership principal on a basis permitting of control solely by the dealership principal and without actual or potential interference by any other party and also to insure the financial stability of the Chevrolet dealership organization for the mutual advantage of the Chevrolet dealership and of Chevrolet Motor Division, it is the desire and policy of

Chevrolet Motor Division that all ownership of the Chevrolet dealership be held directly by individuals approved by Chevrolet Motor Division.

The new Chevrolet Selling Agreement is herewith delivered to you, therefore, upon the express representation by you that action will be taken to effect the foregoing objective not later than September 30, 1949.

Will you please indicate your understanding accordingly by signing the attached carbon copy of this letter and return the same promptly to the undersigned with the executed copy of the new Chevrolet Selling Agreement.

Very truly yours,

T. H. Keating
General Sales Manager
Chevrolet Motor Division
General Motors Corporation

/s/ By J. W. Steele, Zone Manager

The foregoing is hereby agreed to and accepted
this 1st day of November 1948.

Howell Chevrolet Company

/s/ By F. Norman Phelps

PETITIONERS' EXHIBIT No. 33

Mr. Gus Culbertson
Chevrolet Motor Division
Los Angeles, California

September 17, 1948

Dear Gus:

Recently a representative of your office notified me that it is Chevrolet Motor Division's desire that

no "holding company" or "trust" own any part of the stock of a Chevrolet dealership.

I just want you to know that both Mr. Kenyon and I are anxious to cooperate in every way possible. This matter has been referred to our attorney and as soon as he advises us the steps we should take, we will get in touch with you and attempt to work out a satisfactory solution.

Very truly yours,

F. Norman Phelps

FNP:ns

PETITIONERS' EXHIBIT No. 34

Mr. A. W. Strang
Chevrolet Motor Division
Oakland, California

September 18, 1948

Dear Art:

Recently Clarence DeLong notified me that it is Chevrolet Motor Division's desire that no "holding company" or "trust" own any part of the stock of a Chevrolet dealership.

I just want you to know that both Mr. Kenyon and I are willing and anxious to cooperate in every way possible. This matter has been referred to our attorney and as soon as he advises us the steps we should take, we will get in touch with you and attempt to work out a satisfactory solution.

Very truly yours,

F. Norman Phelps

FNP:ns

PETITIONERS' EXHIBIT No. 35

Mr. A. W. Strang October 16, 1948
Chevrolet-Oakland
10910 East 14th Street, Oakland 4, California

Dear Art:

Mr. DeLong and I had a conference concerning our situation after the Contracting Meeting here in Sacramento last Monday; then on Wednesday Mr. DeLong called and asked that I give you the information concerning our setup as I gave it to him verbally.

You will remember that previously I informed you we would do anything that Chevrolet Motor Company required concerning our capital structure, and inasmuch as the Division wishes us to eliminate the Trust and the Holding Company, I informed you we would arrange to do this.

As you know, the J. A. K. Co., which is a Nevada Corporation owned by James A. Kenyon, now owns 30 per cent of the stock in Capitol Chevrolet Company, 30 per cent in Mid Valley Chevrolet, and 20 per cent in Howell Chevrolet. Our attorney advises that if this J. A. K. Co. were to be liquidated at the present time, the tax situation is such that Mr. Kenyon and I would be subject to approximately \$90,000.00 tax.

It would seem that if it were possible for you to permit us to postpone the change until the Revenue Act of 1949 passes both the House and the Senate, it would be most helpful to us.

Also, the complications would be the same in the separation of the Center Chevrolet at Colton from Mid Valley Chevrolet in San Bernardino.

So in both instances it unquestionably would work a hardship on us to make the changes at the present time—and if at all possible we would like to wait and see if this new tax bill is passed. It is my understanding that it passed the House at the last session, but was buried in the Senate due to the great number of Bills in the closing days of the session.

At the present time we are working on a way to buy out the Trust by the different corporations. We believe this can be handled because although it is an irrevocable Trust, Mr. Kenyon has jurisdiction over the Trust until his daughter becomes of age.

In eliminating both the Trust and the Holding Company, it may be necessary to reduce our Net Working Capital substantially, and this might result in our being under-capitalized according to the established standard requirements.

We will give you a detailed report as to just what we would like to do in the very near future, at which time I will come to your office and explain the entire transaction in detail. I would appreciate very much having Mr. Connell sit in on this discussion because, as you know, the deals in Southern California are also involved.

Because of the complications, I would appreciate Chevrolet Motor Division giving us six months or

a year to work out of the seeming difficulties with which we are faced at the present time.

Very truly yours,

F. Norman Phelps, President

cc—Mr. J. L. Connell, Mr. Gus Culbertson, Mr. J. A. Kenyon.

FNP:ns

PETITIONERS' EXHIBIT No. 36

AGREEMENT

This Agreement, made and entered into this 21 day of December, 1948, by and between F. Norman Phelps, Alice Phelps, James A. Kenyon, Jackson Howell, and James A. Kenyon, Trustee of the Patricia May Kenyon Trust.

Witnesseth:

Whereas the parties hereto are all stockholders of Howell Chevrolet Company except James A. Kenyon, who is the owner and holder of all of the outstanding capital stock of J. A. K. Co., a Nevada Corporation, which owns 180 shares of the capital stock of Howell Chevrolet Company; and

Whereas, the Chevrolet Division of General Motors Corporation has notified Howell Chevrolet Company that the stock ownership of the Patricia May Kenyon Trust in Howell Chevrolet Company must be discontinued; and

Whereas, the parties hereto have agreed upon a plan whereby the said demands of the Chevrolet

Division of General Motors Corporation shall be met; and

Whereas, the said plan contemplates that the Howell Chevrolet Company shall purchase 100 shares of its outstanding capital stock from F. Norman Phelps and Alice Phelps, 100 shares from Jackson Howell, and 100 shares from the Patricia May Kenyon Trust, and that, subject to the approval of the Superior Court of the State of California, James A. Kenyon will purchase from the said Patricia May Kenyon Trust 20 shares of the said Howell Chevrolet Company capital stock; and

Whereas, in the event that the Court approves said purchase by James A. Kenyon from the Patricia May Kenyon Trust the voting control of F. Norman Phelps and Alice Phelps, Jackson Howell and James A. Kenyon will be equal, but in the event that the Court shall not permit of the purchase by the said James A. Kenyon from the said Patricia May Kenyon Trust of 20 shares of Howell Chevrolet Company capital stock and the said stock is purchased by the Howell Chevrolet Company, the voting control will not be equal as among these parties;

Now, Therefore, in consideration of the sum of One Dollar (\$1.00) in hand paid each to the other, and other valuable considerations, F. Norman Phelps and Alice Phelps together and Jackson Howell agree that, in the event that the said Superior Court shall not approve of the application of James A. Kenyon to purchase 20 shares of the

Howell Chevrolet Company capital stock from the Patricia May Kenyon Trust, said Howell Chevrolet Company may purchase the said 20 shares at the price of \$465.08 per share, and that in such event they will sell to said James A. Kenyon $6\frac{2}{3}$ shares each of Howell Chevrolet Company capital stock now owned by them respectively (F. Norman Phelps and Alice Phelps $6\frac{2}{3}$ shares and Jackson Howell $6\frac{2}{3}$ shares) at the said price of \$465.08 per share; and James A. Kenyon agrees to buy from F. Norman Phelps and Alice Phelps $6\frac{2}{3}$ shares of Howell Chevrolet Company capital stock and from Jackson Howell $6\frac{2}{3}$ shares of the said capital stock of Howell Chevrolet Company at said per share price.

This agreement shall be binding upon the heirs and assigns of the parties hereto.

In Witness Whereof, the parties hereto have hereunto set their hands the day and year first above written.

/s/ F. Norman Phelps

/s/ Alice Phelps

/s/ James A. Kenyon

/s/ Jackson Howell

/s/ Jas. A. Kenyon, Trustee

Trustee of the Patricia May
Kenyon Trust

[Title of Tax Court and Cause.]

STIPULATION TO TAKE DEPOSITION

It Is Hereby Stipulated and Agreed by and between the parties hereto by their respective counsel of record that the testimony of J. L. Connell, a witness on the part of the petitioners, whose address is 728 Harcourt Road, Gross Point, Michigan, be taken at 9:00 a.m. o'clock on August 30, 1955 at 1104 Pacific Mutual Building, 523 West 6th Street, Los Angeles 14, California, before Helen D. Wilson, a notary public in and for the county of Los Angeles, State of California, and that if said deposition is not completed on said day it will be continued from time to time thereafter until completed; that said deposition and testimony, when taken, may be read and used in evidence in said cause on any trial thereof or in any proceeding therein, subject to the same objections and exceptions as if said witness were personally present, but without objection or exception to the time, place and manner of taking the same, or to the form of the questions, unless noted at the time.

/s/ WELLMAN P. THAYER,
Counsel for Petitioners, F. Norman Phelps, Alice
Phelps and James A. Kenyon Trust, James A.
Kenyon Trustee.

/s/ CAMERON B. AIKENS,
Counsel for Petitioners, Jackson Howell and Vir-
ginia Howell

/s/ JOHN POTTS BARNES, REM
Chief Counsel, Internal Revenue Service, Counsel
for Respondent.

[Title of Tax Court and Causes.]

DEPOSITION OF JOHN LESTER CONNELL

Room 1104, Pacific Mutual Building, 523 West
Sixth Street, Los Angeles 14, California. Tuesday,
August 30, 1955.

Testimony for Petitioners

The parties met, pursuant to Stipulation, at 1:00
p.m. at the above time and place.

Present: Wellman P. Thayer, Esq., of Dempsey,
Thayer, Deibert & Kumler, 523 West Sixth Street,
Los Angeles 14, California, for Petitioners F. Nor-
man Phelps and Alice Phelps and the James A.
Kenyon Trust. Cameron B. Aikens, Esq., of Getz,
Aikens & Manning, 6435 Wilshire Boulevard, Los
Angeles 48, California, for Petitioners Jackson
Howell and Virginia Howell. Mark Townsend, Esq.,
(Hon. John Potts Barnes, Esq., Chief Counsel, In-
ternal Revenue Service) 1135 Subway Terminal
Building, Los Angeles, California, for the Com-
missioner.

Proceedings

JOHN LESTER CONNELL

called as a witness for and on behalf of the Peti-
tioners, having been first duly sworn, was examined
and testified as follows:

(Deposition of John Lester Connell.)

Direct Examination

Q. (By Mr. Thayer): Will you state your full name, please?

A. John Lester Connell, C-o-n-n-e-l-l.

Q. What is your occupation, Mr. Connell?

A. I am presently on special assignment to the General Sales Manager of Chevrolet Motor Division, GM.

Q. How long have you been employed by Chevrolet Motor Division of the General Motors Corporation?

A. This is my 25th year.

Q. What offices have you held during the course of that employment?

A. I have been Zone Manager in Des Moines, Zone Manager in New Orleans, Assistant Regional Manager, Chicago, Regional Manager, Kansas City, Regional Manager here on the Coast and now——

Q. When did you start your present work?

A. I started with the company in December 10, 1931. At that time I was Special Representative, and three years later I was made Zone Manager.

Q. When did you first become a Regional Manager?

A. March 5 of 1945 at Kansas City.

Q. During the year 1948 what was the nature of your employment?

A. Regional Manager of the Pacific Coast Region located at Oakland, California.

Q. During the year 1948 was one of your official duties, as Regional Manager for the Pacific Coast Region, to familiarize yourself with directives from the General Sales Manager to the dealers

(Deposition of John Lester Connell.)

within your region? A. Yes, sir.

Q. Do you know, of your own knowledge, whether, during the year 1948, Chevrolet Motor Division of General Motors Corporation had a policy concerning the ownership of interests in dealerships by trusts and holding companies?

A. There was such a policy issued in 1948. I couldn't tell you what month.

Q. What was that policy?

A. The policy was to the effect that trusts and/or holding companies could not own, as such, interest in Chevrolet dealerships.

Q. I show you six documents which have been marked Petitioners' Exhibits 27 through 32, both inclusive, and will ask you to examine them.

(The witness examined the exhibits.)

Q. (By Mr. Thayer): Referring to Petitioners' Exhibits 27 through 32, both inclusive, I will ask you whether the statements contained in such letters to the effect that the operation of the three dealerships mentioned therein was unsatisfactory in that all or part of the ownership of such dealerships was held by a trust and a holding company, were in conformance with the policy of Chevrolet Motor Division, which you have just mentioned.

A. They all state that they are unsatisfactory in that all or part of the ownership is held either by a trust or a holding company. It further states in Paragraph 3 that, "The new Chevrolet selling agreement is herewith delivered to you, therefore, upon the express representation by you that action will be taken to effect the foregoing objective not

(Deposition of John Lester Connell.)

later than April 30, 1949." This is a standard form letter that we used in all cases of this kind that were in violation of either the trust policy or the holding company policy. We were going on record with these men who had previously been advised verbally that they were in violation of a policy now in effect by the Chevrolet Motor Division.

Q. Those letters, then, were issued in conformance with that policy?

A. That's right, and these letters, of course, were issued by the zone managers who operated under the Regional Office and handled all the operations of the dealerships and only referred to the Region those cases which they could not bring to a conclusion.

Q. Do you know, of your own knowledge, whether any dealers within the Pacific Coast Region were affected by the Chevrolet Motor Division policy?

A. Yes, there were some five or six.

Q. During the year 1948 did you know, of your own knowledge, that the Capitol Chevrolet Company, the Mid-Valley Chevrolet Company and the Howell Chevrolet Company were operating in contravention of the policy which you have just mentioned?

A. I did. I want to make this statement here that prior to the issuance of this policy, none of these dealerships were in violation of anything, because we had no such policy in effect prior to 1948. A dealership having a trust or a holding company owning any part of that dealership after our 1948

(Deposition of John Lester Connell.)

Selling Agreement were advised that they would have to, in some form or other, remove the interest owned by the holding company or trust to qualify for a new Selling Agreement.

Q. In your capacity as Regional Manager of the Pacific Coast Region, did you, during the year 1948, counsel or advise any of the affected dealers within your region concerning the policy above mentioned?

A. I had two dealers who, for some reason or another, did come to the Region to discuss their problems with me, not only the dealerships in question, but specifically one other dealership.

Q. In your official capacity as Regional Manager of the Pacific Coast Region of Chevrolet Motor Division, did you at any time during the year 1948 advise any of the officers of Capitol Chevrolet Company, Mid-Valley Chevrolet Company or Howell Chevrolet Company of the Chevrolet Motor Division policy which you have mentioned above?

A. I might want to qualify the word "advise" but I did discuss this entire matter with one of the officials who came to me at that time with their own problem as to when and how they might qualify.

Q. What official was that?

A. Mr. Phelps, Norman Phelps.

Q. Will you please relate the circumstance, or circumstances under which Mr. Phelps came to you and discussed with you the matter of this policy?

A. The whole matter had been first discussed with Mr. Phelps by our then Zone Manager, I be-

(Deposition of John Lester Connell.)

lieve Mr. Strang in Oakland, who advised him of the policy going into effect, and because both the trust and the holding company owned part of their dealerships, that they would have to qualify in order to be given a new selling agreement the following year. He had some conditions at that time—let me put it this way: At no time did he object to going along with us on our new policy, but he was asking for time and felt that they possibly couldn't qualify between the time we first talked to him and the time that our new selling agreement would be issued. I don't recall a particular circumstance, but it was agreed that there would be some extension given to him, but that we were not waiving our policy, and one of the letters was then sent to all of his agencies notifying them that we were signing this agreement, but he would have to meet our requirements before the new one would be offered. In effect, that is what our letter said. At that time, too, because of what we really call about three and a half dealerships, actually three dealerships and a smaller dealership which was wholly owned by one of the dealerships, it was my suggestion to Norm that because our operation had been mutually satisfactory as the operation had been going along, that to qualify under this new provision I felt it would be more than fair that each retain, after meeting our new requirements, the same per cent of ownership in these dealerships, as otherwise it would work a hardship on one or the other who might be at the time in violation, realizing that in this particular instance the viola-

(Deposition of John Lester Connell.)

tion was mainly on the part of one partner affecting another partner. I thought it no more than fair that after the trust and holding company had withdrawn their interest, that all partners still retain a like percentage in their dealerships. That I discussed with Mr. Phelps.

Q. When you referred to "each" and again to "the partners," were you referring to Mr. Phelps, Mr. Kenyon and Mr. Howell?

A. That's right.

Q. (By Mr. Aikens): Mr. Connell, you refer to the signing of the contract. Are you referring to a direct dealer selling agreement?

A. I shouldn't have said "contract." We don't have any such thing. I am referring to our selling agreement.

Q. And the date of that selling agreement, for what period are we referring to?

A. We are referring to what would be normally known as the 1949 Selling Agreement effective November 1, 1948. We were offering the 1948 Selling Agreement with the provision that they meet our requirement before we would offer to discuss with them the signing of their 1949 Selling Agreement.

Q. I show you Petitioners' Exhibit No. 24 and ask you whether or not this was the type of agreement that you referred to in your last answer given to Mr. Thayer's question.

A. Yes, that is a photostat of our regular selling agreement.

Q. (By Mr. Thayer): Mr. Connell, based upon your long experience as an executive of Chevrolet

(Deposition of John Lester Connell.)

Motor Division of General Motors Corporation, do you have an opinion as to the effect of the failure or refusal of Capitol Chevrolet Company, Mid-Valley Chevrolet Company or Howell Chevrolet Company to comply with the policy of Chevrolet Motor Division, as set forth in Petitioners' Exhibits 27 through 32, both inclusive?

A. It was my considered opinion in my capacity that either this dealership or any other dealer, if they were in violation, would again be notified, after having first received this letter notifying them that they were in violation, that their present selling agreement had been given them with the understanding that during its life they would comply with our new policy. They would then be sent another letter in which they would be told a new selling agreement was not being offered, because they were not complying with the policy of the company, stating, in effect why and how they were not qualifying. We have many different policies, of course, that might come under that same heading.

Q. Mr. Connell, were the three dealerships, Capitol Chevrolet Company, Mid-Valley Chevrolet Company and Howell Chevrolet Company, all in the Pacific Coast Region? A. That's right.

Mr. Thayer: That is all.

Cross Examination

Q. (By Mr. Townsend): Mr. Connell, despite the fact that a dealer was a corporation in form, Chevrolet Division would still look to certain key

(Deposition of John Lester Connell.)

individuals and hold those individuals personally responsible, would they not?

A. We do. In fact, our selling agreement recognizes only the person named in Paragraph 3.

Q. In other words, you wouldn't hold every shareholder in the corporation responsible, just those key individuals?

A. We would. I would have to give you my own opinion, we would look to that man to meet our requirements by seeing that the corporation qualified. We wouldn't offer him that right to sign again in Paragraph 3. I might say that I don't know of anyone that was not offered a selling agreement. In this case they qualified. We merely gave them some time to qualify, and they did, so we went along.

Q. Now, as you know, Mrs. Phelps also owned stock in these corporations.

A. Yes, I know that.

Q. Would the Chevrolet Division object if she transferred or sold her stock to Mr. Phelps?

A. No, but we again have a policy that covers that. The question would have to clear first to the Zone, the Zone then has to pass it to the Region. If the Zone says they see no objection to her selling the stock, they clear it to the Region, and the Regional Manager then has to approve it. He can turn it down and it goes no further, but after the Regional Manager approves, it still has to clear the Central Office. Then the approval comes back to the Region, and the Zone is notified.

Q. As a practical matter the fact that Mr.

(Deposition of John Lester Connell.)

Phelps was one of the individuals that you looked to who is named in Paragraph 3, in your opinion would there be any objection to his wife's transferring her stock to him?

A. I see no objection.

Q. Does Chevrolet Division, or did Chevrolet Division of General Motors, have any policy with respect to equal ownership of these corporations, and I speak of corporations Mid-Valley——

A. No, only this: The man in Paragraph 3, either in a partnership or a corporation, must own outright a minimum of 25 per cent of whatever the issued stock of the corporation is. But a change of one share of stock still has to clear through the same steps I told you about.

Q. The only requirement, then, that Chevrolet Division of General Motors had was that a key individual, one named in Paragraph 3, own at least 25 per cent?

A. Must own, or he cannot be in Paragraph 3.

Q. Then Chevrolet Division would only object if a shareholder's interest fell below 25 per cent?

A. That's right.

Q. Would they object if he was completely eliminated?

A. Then our selling agreement would not be in effect, and we would have to start all over again and have a new man who could qualify to be in Paragraph 3. He must not only be acceptable, but he must be qualified as an operator.

Q. Would you consider Mr. Phelps qualified as the only individual? If he attained complete own-

(Deposition of John Lester Connell.)

ership of this corporation, would you consider him qualified to be the only individual named in Paragraph 3?

A. I wouldn't know. I wouldn't say the only one qualified.

Q. In other words, you do have selling agreements with just one man named in Paragraph 3?

A. Oh, yes, and we have others with more than one.

Q. Would you consider Mr. Phelps as well qualified as any other dealership where one man might be named in Paragraph 3?

A. That's right. We recognize that or he wouldn't be there.

Q. Based on your experience with General Motors, can you see where any objection would have been raised if Mr. Phelps, solely, had been named in Paragraph 3 of a dealership?

A. There would have been no objection to that. In fact, I think that is the way the selling agreement was in effect. I think his signature was the only one there.

Q. You spoke about your suggestion to Mr. Phelps with respect to the equal ownership of these dealerships. Was that your personal suggestion, or was it General Motor's policy that you were expressing?

A. I was not quoting policy. That was my own operation experience. I felt that we had been going along fine. Our relations were splendid, and to make any change in the operation at that time, I didn't feel would be good. I felt, further, and this related

(Deposition of John Lester Connell.)

to Mr. Kenyon, if he had to withdraw his holding company and his trust, which he had, he would be practically pushed out of the deal by Mr. Phelps; that he would either have to raise more money or have to go out and borrow money or take in another partner to put in the money necessary to meet our capital requirements; that it would be no more than fair that they keep like percentages. As to how they took the money out, that is none of my business. My position was merely to see that they met the requirements of their selling agreements and any policies.

Q. Did Mr. Phelps understand that it was your suggestion rather than General Motor's suggestion or policy?

Mr. Thayer: I wish to interpose an objection. I object to that question as calling for a conclusion of the witness, a conclusion for which no foundation can or has been laid.

Mr. Aikens: I join in that objection.

The Witness: Yes, I believe he understood that.

Q. (By Mr. Townsend): Was anything said during that conversation about the fact that a new selling agreement would not be issued unless they kept equal ownership?

A. We don't go to that extent. The letters that we issue are put out by our Central office, and they explain in effect what we are telling the dealers, and our dealers usually go along with us on that, as you can see from this letter.

Q. Excuse me, Mr. Connell, I am not discussing the fact about the trust or holding company hav-

(Deposition of John Lester Connell.)

ing to be eliminated. What I am expressly referring to is the fact that they keep equal ownership was your suggestion.

A. It was my prerogative as Manager here on the Coast to keep my dealerships operating as I felt they should be operated, and that was my personal opinion at that time.

Q. Was there any implied threat whatsoever that a new selling agreement would not be issued?

A. None whatsoever on that.

Q. Could Mr. Phelps have understood any implied threat from your suggestion?

A. No reason to.

Q. You know that in 1950 Mr. Kenyon and Mr. Phelps did split up their ownership?

A. That's right.

Q. Did you approve of that?

A. I had to in the normal course of my duties. Originally the forms and papers on which we had to make out a case of this kind were made at the zone level. They would have to clear my office for my signature.

Q. They had the same problems in 1950 that you envisioned back there in 1948 such as raising additional capital to meet the minimum requirements in 1950, did they not?

A. That's right.

Q. But it was still approved by Chevrolet Division?

A. That's right. We give them a reasonable length of time to set up the standard, and then we

(Deposition of John Lester Connell.)

give them a year from the date the standard is written to meet that standard.

Q. But you did approve the splitting between Mr. Phelps and Mr. Kenyon in 1950?

A. That's right.

Q. I understood on your direct testimony that you differentiated between the selling agreement and a contract.

A. I should have never used the word "contract." There is no such thing.

Q. Don't you consider the selling agreement a contract? A. No, sir.

Q. Would you elucidate?

A. General Motors has always contended in all court procedures that we have no such thing as a contract. It is an agreement drawn up and signed by the zone manager and the dealer in which we agree to do certain things and the dealer agrees to do certain things. It has never been held in any court that it is a contract. It is a selling agreement.

Q. It has been in the courts, do you know?

A. Oh, yes. This is my own opinion, but my understanding is that it has been through all the courts and has been held that it is not a contract. I am giving that as my own personal understanding.

Q. It is a gentleman's agreement, more or less?

A. That's right, and I misused the word when I said "contract."

Q. Isn't it a fact, Mr. Connell, that General Motors, the top officials of General Motors, issued

(Deposition of John Lester Connell.)

instructions to their various branch managers not to give opinions or references to the methods to be employed in eliminating these trusts and holding companies from ownerships in these agencies?

A. I didn't give any opinion or suggestion as to how it might be eliminated.

Q. Was that not the policy of General Motors that no opinions or references be given?

A. I was never cognizant of that fact, although it was just good business that it was not our business. We referred them to their own legal counsel.

Mr. Townsend: That is all.

Redirect Examination

Q. (By Mr. Aikens): Mr. Connell, as I understand your testimony, you have testified that you suggested to Mr. Phelps that after the retirement of the trust and holding company, you wanted the balance of stock control in each of the three corporations to remain the same as it was before the retirement of the trust and holding company, is that correct?

A. That is what I thought I stated in my original testimony.

Q. Did you make this suggestion merely as a personal acquaintance or friend of Mr. Phelps or as the Regional Manager of the Chevrolet Motor Division charged with the responsibility of successful operations in the three dealerships that I mentioned here today?

A. Well, certainly it was not made as a friend of Norm Phelps or for any benefit he might accrue

(Deposition of John Lester Connell.)

from it, because it would have been, I think, the reverse. I felt the dealerships should remain on the same percentage basis. It wasn't that I ordered it as such. It was my suggestion that it be kept that way, because the operations were going along well. Everything was seemingly in good shape, and it would be forcing one of the partners out of the business. It would have put a man in a position of having to raise the money to meet our capital requirements. I am merely supposing now. It wasn't in my mind at that time of anything of a personal nature. It was purely that I felt that the business should be kept on the same basis as it was, and we were asking them to meet one of our policies by removing the trust and holding company interest. It was strictly a business decision on my part, and good or bad that was my decision at that time, and I felt it was to the best interest of our company and dealerships.

Q. But you made that suggestion as the Regional Manager of the Chevrolet Motor Division, which position you held at that time?

A. That's right.

Mr. Aikens: Those are all the questions that I have.

Mr. Thayer: May it be stipulated that the deposition may be signed before any notary public and further that whether it be signed or unsigned, it may be used for the same manner and the same purpose and place and for the same intents and purposes as it would be if it were signed?

Mr. Townsend: So stipulated.

Mr. Aikens: So stipulated.

Mr. Thayer: May it be further stipulated that this deposition may be introduced in evidence at the hearing set for September 12, 1955, at Los Angeles, California? May it be further stipulated that the reporter may serve copies on the parties without the necessity of sending them to the Tax Court?

Mr. Townsend: So stipulated.

Mr. Aikens: So stipulated.

(The deposition was closed at 2:00 p.m.)

The undersigned certifies that he has read the foregoing testimony adduced at the place and on the date shown in the above-entitled cause; that the 23 pages of testimony constitute a full, true and correct transcription of said testimony; and that changes, alterations or modifications, if any, have been noted by the notary public, at my suggestion, and initialed by me in each instance.

September 7, California, Los Angeles, 1955.

/s/ JOHN LESTER CONNELL,
Deponent

[Endorsed]: T.C.U.S. Filed Sept. 12, 1955.

[Title of Tax Court and Causes.]

STIPULATION TO TAKE DEPOSITION

It Is Hereby Stipulated and Agreed by and between the parties hereto by their respective counsel of record that the testimony of James A. Kenyon,

a witness on the part of the petitioners, whose address is Apartado 174, Acapulco, Gro. Mexico, be taken at 3:00 p.m. o'clock on September 8, 1955 at 1104 Pacific Mutual Building, 523 West 6th Street, Los Angeles 14, California, before Helen D. Wilson, a notary public in and for the County of Los Angeles, State of California, and that if said deposition is not completed on said day it will be continued from time to time thereafter until completed; that said deposition and testimony, when taken, may be read and used in evidence in said cause on any trial thereof or in any proceeding therein, subject to the same objections and exceptions as if said witness were personally present, but without objection or exception to the time, place and manner of taking the same, or to the form of the questions, unless noted at the time.

/s/ WELLMAN P. THAYER,
Counsel for Petitioners, F. Norman Phelps, Alice Phelps and James A. Kenyon Trust, James A. Kenyon, Trustee.

/s/ CAMERON B. AIKENS,
Counsel for Petitioners, Jackson Howell and Virginia Howell.

/s/ JOHN POTTS BARNES, REM
Chief Counsel, Internal Revenue Service, Counsel for Respondent.

[Title of Tax Court and Causes.]

DEPOSITION OF JAMES A. KENYON

Room 1104, Pacific Mutual Building, 523 West Sixth Street, Los Angeles 14, California. Thursday, September 8, 1955.

Testimony for Petitioners

The parties met, pursuant to Stipulation, at 3:00 p.m. at the above time and place.

Present: Wellman P. Thayer, Esq., of Dempsey, Thayer, Deibert & Kumler, 523 West Sixth Street, Los Angeles 14, California, for Petitioners F. Norman Phelps and Alice Phelps and the James A. Kenyon Trust. Cameron B. Aikens, Esq., of Getz, Aikens & Manning, 6435 Wilshire Boulevard, Los Angeles 48, California, for Petitioners Jackson Howell and Virginia Howell. Mark Townsend, Esq., (Hon. John Potts Barnes, Esq., Chief Counsel, Internal Revenue Service) 1135 Subway Terminal Building, Los Angeles, California, for the Commissioner.

Proceedings

JAMES A. KENYON

called as a witness for and on behalf of the Petitioners, having been first duly sworn, was examined and testified as follows:

Direct Examination

Q. (By Mr. Thayer): Will you state your full name, please?

(Deposition of James A. Kenyon.)

A. James A. Kenyon.

Q. Mr. Kenyon, were you, during the entire year 1948, an officer of each of the three corporations Capitol Chevrolet Co., Mid-Valley Chevrolet Co., and Howell Chevrolet Co.?

A. I was.

Q. During the entire year 1948 were you the Trustee of the James A. Kenyon Trust?

A. I was.

Q. During the entire year 1948 were you the owner of all of the outstanding capital stock of the J. A. K. Co. corporation? A. I was.

Q. Mr. Kenyon, I show you six letters which have been marked Petitioners' Exhibits 27 through 32, both inclusive, and will ask you to examine them.

(The witness examined the documents.)

In your capacity as an officer of the three corporations, Howell Chevrolet Co., Mid-Valley Chevrolet Co., and Capitol Chevrolet Co., were you aware of the receipt of these six letters on or about the date they bear? A. I was.

Q. Did you, at any time during the year 1948, discuss with your attorney, Mr. Thomas R. Dempsey, the matter of removing the James A. Kenyon Trust and the J. A. K. Co. from ownership of stock in the three corporations, Capitol Chevrolet Co., Mid-Valley Chevrolet Co., and Howell Chevrolet Co. in order to comply with the demands made by Chevrolet Motor Division in the six letters marked Petitioners' Exhibits 26 through 32, both inclusive?

A. Yes, I did.

(Deposition of James A. Kenyon.)

Q. Did you at any time request Mr. Dempsey to advise you concerning a method, or methods, by which Chevrolet Motor Division's requirements, as set forth in these letters, could be accomplished?

A. I did.

Q. In your discussions with Mr. Dempsey, did you and he at any time discuss the possibility of you personally purchasing all of the stock of the three corporations which were owned by the Trust?

A. Yes, we did.

Q. Do you know of your own knowledge why such a purchase was not made?

A. Yes, I do.

Q. Why?

A. First, because I didn't have any money. Mr. Dempsey couldn't find the money for me to put that investment in to buy the stock.

Q. During the last four months of 1948 what did your assets consist of?

A. Outside of J. A. K. Co., I had a home in Palm Springs, maybe two or three thousand dollars in the bank.

Q. Would you say, then, that your total assets consisted of your stock in the J. A. K. Co., your Palm Springs home and the money in the bank?

A. It was.

Q. Did you sell that home during 1948 or any time shortly thereafter?

A. I sold the home in 1952.

Q. And how much did you receive for it?

A. \$22,500.

Q. In your discussions with Mr. Dempsey, did

(Deposition of James A. Kenyon.)

you and he at any time discuss the possibility of your eliminating the J. A. K. Co. ownership of stock in the three corporations by means of a liquidation? A. Yes, we did.

Q. Do you know, of your own knowledge, why a liquidation of J. A. K. Co. was not accomplished during the year 1948? A. Yes, I do.

Q. Why was it not accomplished?

A. As Mr. Dempsey explained to me, it would cost me some \$80,000 or \$90,000 in taxes to liquidate J. A. K. Co.; that the 1949 Revenue Law would probably allow me to liquidate with no tax.

Q. It has been stipulated that prior to December 1, 1948, the James A. Kenyon Trust owned 170 shares of stock in Capitol Chevrolet Co., 120 shares of stock in Howell Chevrolet Co., and 170 shares of stock in Mid-Valley Chevrolet Co. It has also been stipulated that on December 21, 1948 Capitol Chevrolet Co. redeemed 130 of the Trust shares, Howell Chevrolet Co. redeemed 100 of the Trust shares, and Mid-Valley Chevrolet Co. redeemed 130 of the Trust shares. Do you know, of your own knowledge, why each of the three corporations did not redeem all of the Trust shares rather than merely a part of them? A. Yes, I do.

Q. What was that reason?

A. The corporations wouldn't have had enough net working capital left to come within the financial standards of the Chevrolet Motor Company.

Q. By "financial standard" you mean the capital standard requirements?

A. Capital standards.

(Deposition of James A. Kenyon.)

Q. Following the redemption of a part of the Trust shares in each of the three companies on December 21, 1948, did you have any plan by which it was proposed to complete the removal of the Trust from its ownership of shares in the three corporations? A. Yes, I did.

Q. What was that plan?

A. Through this office we petitioned the court. Inasmuch as it was an irrevocable trust, we petitioned the court to allow me to purchase those extra shares of stock.

Q. And it was proposed that if that petition was granted, that you would make that purchase?

A. That I would make the purchase.

Mr. Thayer: That is all.

Cross Examination

Q. (By Mr. Townsend): Mr. Kenyon, during the year 1948 you received some \$90,000 combined salary from the three corporations. Why couldn't you use some of that money to purchase the stock, or rather, what happened to all that money in view of your net worth at the end of the year?

A. I would assume that I had most of that money tied up in the mortgage on the Calvada Lodge at Lake Tahoe in Nevada.

Q. Would you amplify somewhat on this mortgage you are referring to?

A. I had a friend that started to build the Calvada Lodge, and I financed him. He put up \$25,000, and I put up some, I think, \$15,000 to start with. Then he started to build it larger and

(Deposition of James A. Kenyon.)

larger, and I put in another \$10,000, another \$25,000, another \$30,000 over a period of that year and probably the next year until I had a total of \$85,000 invested.

Q. And in return for that investment you received a security mortgage on the lodge?

A. Mortgage on the property.

Q. Did you seek court approval when the corporations purchased the stock of the Trust?

A. I didn't understand you.

Q. Did you seek court approval when the corporations purchased the stock from the Trust?

A. No.

Q. Now, the Trust could have sold its stock to a third person other than yourself, could it not?

A. That is correct.

Q. Why did you not do that?

A. We would have had to take another partner in the business. He would have had to be approved by Chevrolet Motor Company, and I would have liked to keep the stock holdings equal.

Q. Now, after the liquidation of the corporations in 1950, did you continue your ownership in Mid-Valley Chevrolet Co.?

A. Yes, I did.

Q. In what form was the dealership continued? Was it a partnership or a corporation?

A. Partnership.

Q. And who were the other partners besides yourself? A. J. E. Carpenter.

Q. J. E. Carpenter and you? A. Yes.

Q. Was that an equal partnership?

(Deposition of James A. Kenyon.)

A. No. He had 25 per cent and I had 75 per cent.

Q. Did you have any agreement with Mr. Phelps as far as sharing the taxes which would result from the liquidation of the J. A. K. Co.

A. Yes, I did.

Q. And how was that arrangement?

A. Originally Phelps owned the J. A. K. Co. As to the date that I took it over, I don't recall. I traded him stock in the other companies for the J. A. K. Co., and he was to pay the stock up until the time that the stock was transferred into my name. I mean the taxes up until the stock was transferred into my name.

A. I see. So that if J. A. K. Co. was liquidated, then Mr. Phelps would also bear a share of the resultant tax?

A. He would have had to pay a portion of the tax.

Q. What was your intention, or what was the intention of the parties as you understood it, if you didn't get court approval to purchase the remaining Trust shares?

A. Then we were going to have the companies individually buy out the additional shares, and I was going to buy half of the shares from the individual, or rather in the case of Capitol, Phelps would buy out 40 shares, and I would, in turn, buy 20 shares from him. The same in Howell's case.

Q. The plan was for the corporation to buy the remaining shares of the corporation?

A. That's right.

(Deposition of James A. Kenyon.)

Q. I believe you stated in your direct testimony that the corporations did not redeem all the shares of the stock because it would then cause the working capital to fall below the minimum standards, as set by General Motors.

A. Correct.

Q. If only the shares of the Trust had been redeemed, would that have caused the corporations to fall below those minimum standards?

Mr. Thayer: I will stipulate that it would not.

The Witness: No.

Q. (By Mr. Townsend): What you meant by your answer on your direct examination, then, was that a combined redemption of the balance of the Trust shares, plus a corresponding pro rata redemption of the Phelps and Howell shares, would have caused the capital of the corporations to fall below the minimum capital standard requirements?

A. That is correct.

Redirect Examination

Q. (By Mr. Thayer): You spoke of loaning \$80,000 on a mortgage,—

A. No, I didn't. Wait a minute. Is that a question?

Q. —on a mortgage on property at Lake Tahoe. Do I understand from your answer to Mr. Townsend's question that you loaned \$80,000 of your funds to the mortgage on that property?

A. If I am not mistaken, my testimony says that we started off with \$25,000, and I put in \$15,000. Out of the \$80,000 I had to pay X income

(Deposition of James A. Kenyon.)

taxes to the Government, and X income taxes to the State. Right out of that \$80,000 I had to live. We started to build this business in Lake Tahoe. I think my first investment was \$5,000.

Q. Can you give the date of that?

A. My guess would be—no, I can't give you the exact date. I could if I had my records. My guess would be that it was in 1946 or 1947. As we put another part on to the building, or put in some more gambling tables, I had put in another \$10,000 into it and another \$10,000 until at the present time I now have \$85,000 in it, but it took a period of years to do it.

Q. Then, during the year 1948 you did not invest \$80,000 in that mortgage? A. No.

Q. During the year 1948 was the amount owing to you by the mortgagee \$80,000?

A. No, sir.

Q. Do you remember, approximately, how much it was?

A. Probably \$40,000, probably half of it.

Q. During the year 1948 were you indebted to anyone?

A. Outside of the United States Government, I don't think so.

Q. I call your attention to our retained office copy of your 1948 Federal income tax return and in particular to the item of interest deduction claimed in the amount of \$2,831.11. This return indicates that during the year 1948 you paid interest to General Motors Acceptance Corporation, Capital National Bank, Lincoln National Life Insurance

(Deposition of James A. Kenyon.)

Company, Northwestern Mutual Life Insurance Company, Irene Corwin. Does that refresh your recollection as to whether or not you were indebted to any of these persons?

A. Yes. Irene Corwin is my present wife. It seems to me that I put \$18,000 of her money into this Calvada Lodge. The life insurance interest was a straight loan that I had made some time prior to——

Q. Do you remember the approximate amount of the loan?

A. Again I would have to go to my records. It is very likely the General Motors Acceptance Corporation was for an automobile, but the \$1,000 to Capital National Bank and the two national life insurance companies at 6 per cent would figure some \$10,000 loan.

Q. On your cross examination I understood you to state that you had an agreement with Mr. Norman Phelps whereby he would share the tax on the liquidation of J. A. K. Co. Did I understand you correctly? A. That is correct.

Q. When J. A. K. Co. was liquidated in 1950, did Mr. Phelps pay any part of the tax on that liquidation?

A. Your office has the entire J. A. K. Co. review insofar as the transfer—the agreement drawn by your office where Phelps would pay part of the tax and the tax returns for J. A. K. Co.

Q. Then, it is your recollection that he did share in the tax on the liquidation?

A. I would assume he did.

(Deposition of James A. Kenyon.)

Mr. Thayer: That is all.

Recross Examination

Q. (By Mr. Townsend): What eventually happened to the remaining shares of the Trust stock?

A. Well, we liquidated it. Rather, when I sold my share of Capitol Chevrolet and Howell Chevrolet and the Trust Chevrolet, or the Trust to Phelps, and bought his share of Mid-Valley Chevrolet and Center Chevrolet at Colton, I invested the balance of the Trust in a mortgage on some real estate property again at Lake Tahoe.

Q. Well, then, the stock was sold to Mr. Phelps?

A. I bought all the stock that Mr. Phelps had in Mid-Valley Chevrolet at the book value of Mid-Valley Chevrolet at that time and sold to Mr. Phelps all of the stock which the Trust owned in Howell Chevrolet and Capitol Chevrolet at their book value.

Mr. Townsend: That is all.

Mr. Thayer: At this point I offer in evidence a photostatic copy of a retained office copy of the United States Federal Income Tax Return of James A. Kenyon for the year 1948 as Petitioners' Exhibit No. 37.

(The document above referred to was marked Petitioners' Exhibit No. 37 for identification and received in evidence.)

[See pages 191-3.]

Mr. Townsend: I have no objection.

Mr. Aikens: So stipulated.

Mr. Thayer: May we stipulate that the deposi-

(Deposition of James A. Kenyon.)

tion may be signed before any notary public and that whether it be signed or unsigned it may be used for the same manner and the same purpose and place and for the same intents and purposes as it would be if it were signed?

Mr. Townsend: I will stipulate to that.

Mr. Aikens: So stipulated.

Mr. Thayer: May we also stipulate that this deposition may be introduced in evidence at the hearing set for September 12, 1955 in Los Angeles, California? May we also stipulate that the reporter may serve copies on the parties without the necessity of sending them to the Tax Court?

Mr. Aikens: I will stipulate to that.

Mr. Townsend: So stipulated.

(The deposition was closed at 4:00 p.m.)

The undersigned certifies that he has read the foregoing testimony adduced at the place and on the date shown in the above-entitled cause; that the 18 pages of testimony constitute a full, true and correct transcription of said testimony; and that changes, alterations or modifications, if any, have been noted by the notary public, at my suggestion, and initialed by me in each instance.

Los Angeles, California, September 9, 1955.

/s/ JAS. A. KENYON,
Deponent

[Endorsed]: T.C.U.S. Filed Sept. 12, 1955.

PETITIONERS' EXHIBIT 37
INDIVIDUAL INCOME TAX RETURN

For calendar year 1948 or fiscal year beginning 1948, and ending 1948

EMPLOYEES: Instead of this form, you may use Form 1040A if your total income was less than \$3,000, consisting wholly of wages shown on Forms W-2, or of such wages and not more than \$100 of other wages, dividends, and interest.

Do not write in these spaces
File
Number
Serial
No.
(Cashier's Stamp)

NAME James A. Kenyon
(PLEASE PRINT. If this is a joint return of husband and wife, use first names of both)
HOME ADDRESS 714 West Olympic Blvd. Room 75
(PLEASE PRINT. Street and number or rural route)
Los Angeles 15 Calif
(City, town, or post office) (Postal zone number) (State)
Occupation Auto dealer Social Security No. 165-10-2792

Your
exempt-
tions

1. List your own name.
If married (did your wife (or husband) had no income, or if this is a joint return of husband and wife, list name of your wife (or husband)).

Name (please print)	Check below whether you (or your wife) were at the end of your taxable year—	On lines a and b below— Write 1 if neither 65 nor blind; Write 2 if either 65 or blind; Write 3 if both 65 and blind.	
	65 OR OVER	BLIND	
YOUR NAME <u>James A. Kenyon</u>	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	a. Number of exemptions for you <u>1</u>
Wife's (or husband's) name <u>Mary H. Brown</u>	Yes <input type="checkbox"/> No <input type="checkbox"/>	Yes <input type="checkbox"/> No <input type="checkbox"/>	b. Number of her (his) exemptions
Name of Other Dependent Relative <u>Mother</u>			Address—If different from yours

Your
income

2. Enter your total wages, salaries, bonuses, commissions, and other compensation received in 1948, BEFORE PAY-ROLL DEDUCTIONS for taxes, dues, insurance, bonds, etc. Also enter amount of income tax withheld. Members of armed forces and persons claiming traveling or reimbursed expenses, see instructions.

Print Employer's Name	Where Employed (City and State)	Amount of Income Tax Withheld	Total Wages
<u>Schedule</u>			
Enter totals		<u>\$ 21,129 72</u>	<u>\$ 126,635 04</u>

How to
figure
your
tax

3. Enter here the total amount of your dividends.

4. Enter here the total amount of your interest (including interest from Government obligations unless wholly exempt from taxation).

5. If you received any other income, give details on page 2 and enter the total here.

6. Add income shown in items 2, 3, 4, and 5, and enter the total here \$126,635 04

IF YOUR INCOME WAS LESS THAN \$3,000.—You may find your tax in the tax table on page 4. This table, which is provided by law, automatically allows about 10 percent of your total income for charitable contributions, interest, taxes, casualty losses, medical expenses, and miscellaneous expenses. If your expenditures and losses of these classes amount to more than 10 percent, it will usually be in your advantage to itemize them and compute your tax on page 3.

IF YOUR INCOME WAS \$3,000 OR MORE.—Disregard the tax table and compute your tax on page 3. You may either take a standard deduction or itemize your deductions, whichever is to your advantage.

HUSBAND AND WIFE.—To obtain benefits of self-income provisions, husband and wife must file a joint return. If husband and wife file separate returns, or one itemizes deductions, the other must also itemize deductions.

7. Enter your tax from table on page 4, or from line 18, page 3.

8. How much have you paid on your 1948 income tax?
(A) Total tax in item 2, above (attach Original Forms W-2) \$ 21,129 72
(B) By payments on 1948 Declaration of Estimated Tax

9. If your tax (item 7) is larger than payments (item 8), enter BALANCE OF TAX DUE here—
This balance of tax due must be paid in full with return. \$ 42,187 15

10. If your payments (item 8) are larger than your tax (item 7), enter the OVERPAYMENT here—
Check (✓) whether you want this overpayment: Refunded to you ☐ or Credited on your 1949 estimated tax ☐

Tax
due or
refund

If you filed a return for a prior year, what was the latest year? 1947
To which Collector's office was it sent? 6th Calif
To which Collector's office did you pay amount claimed in item 8 (B), above?

I declare under the penalties of perjury that this return (including any accompanying schedules and statements) has been prepared by me and to the best of my knowledge and belief is a true, correct, and complete return.

(Signature of person, other than taxpayer, preparing this return) (Date)

Is your wife (or husband) making a separate return for 1948? (Yes or No)
If "Yes," write her (or his) name: _____
Collector's stamp to show that this return has been filed by me and to the best of my knowledge and belief is a true, correct, and complete return.

(Name of firm or employer, if any)
To assure any benefits of self-income provisions, husband and wife must include all self-income, and BOTH MUST SIGN, even though only one has income.

Petitioners' Exhibit 37

Petitioners' Exhibit 37--(Continued)

JAMES A. KENYON1948IncomeSalaries and bonuses

Capitol Chevrolet Co.	Withheld 7,602.20	14,712.69
Mid-Valley Chevrolet Co.	6,198.70	39,406.46
Howell Chevrolet Co.	7,328.82	42,515.89

21,129.72126,635.04DeductionsContributions

Community chests, Red Cross,
Churches and other organized
Charities - estimated

1,000.00Interest

General Motors Acceptance Corp.
Capitol National Bank,
Lincoln National Life Ins. Co.
and Northwestern Mut. Life Ins. Co.
Irene Corwin

1,031.11

1,800.002,831.11Taxes

Real estate and personal property
State and local sales taxes (estimated)
Unemployment insurance

154.87

700.00

30.00

Total - State return

884.87

California income tax

972.771,857.64Other Deductions

Business traveling and entertainment
not reimbursed, involving numerous
trips between Los Angeles and
Sacramento, San Bernardino, Glendale,
Chicago and Detroit - estimated

6,000.00

Alimony paid to Matilde R. Kenyon

6,750.00

Attorney fees

1,766.8914,516.89

[Title of Tax Court and Causes.]

TRANSCRIPT OF PROCEEDINGS

Court Room No. 9, United States Post Office and Court House Building, Los Angeles, California.
Monday, September 12, 1955.

(Met, pursuant to notice, at 2 o'clock p.m.)

Before: Honorable Arnold Raum, Judge.

Appearances: Wellman P. Thayer, Esq., 523 West 6th St., Suite 1104, Los Angeles 14, Calif., appearing for and on behalf of F. Norman Phelps and James A. Kenyon Trust, Petitioners. Cameron B. Aikens, Esq., 6435 Wilshire Blvd., Los Angeles, Calif., appearing on behalf of Jackson and Virginia Howell, Petitioners. Mark Townsend, Esq., 1135 Subway Terminal Bldg., Los Angeles 13, Calif., appearing for and on behalf of Commissioner of Internal Revenue, the Respondent.

Proceedings

The Clerk: Docket numbers 51216, 51265, and 51282, Jackson and Virginia Howell and associated cases.

Mr. Thayer: Wellman P. Thayer for Petitioners F. Norman and Alice Phelps, and for James A. Kenyon Trust, James A. Kenyon, Trustee.

Mr. Aikens: Cameron B. Aikens for the Petitioners Jackson Howell and Virginia Howell, Petitioners in docket number 51216.

Mr. Townsend: Mark Townsend for the Respondent.

Mr. Thayer: I would like to offer the written motion to consolidate these three cases for hearing and decision.

The Court: The motion will be received and the cases will be consolidated.

Opening Statement on behalf of Jackson and Virginia Howell and associated cases by Wellman P. Thayer.

Mr. Thayer: If the Court please, these three cases have been to a great extent stipulated. We have depositions of three people to offer this afternoon. It is merely a matter of getting the various things in evidence and one witness.

For a brief statement of the case, the deficiencies are deficiencies in income tax for the year 1948, in a total amount of some \$350,000 or more, and the deficiencies all arise out of the same transaction, and involve the same issue of law.

The transaction briefly is this. In 1946, three Chevrolet dealerships were incorporated, and their stock was issued. In the case of two of them, the Capitol Chevrolet and the Mid-Valley Company, to F. Norman Phelps and Alice Phelps, 50 per cent; to the James A. Kenyon Trust, 20 per cent; and to the JAK Corporation, a personal holding company, all of which stock was owned by James Kenyon, 30 per cent.

In the case of the third corporation, Howell Chevrolet Company, the stock was issued, one third

to Jackson Howell, one third to F. Norman Phelps and Alice Phelps, approximately 13.3 per cent to James A. Kenyon Trust, and 20 per cent to the JAK Co. Corporation, the personal holding company. That was in the year 1946.

At the time the corporations were formed, the ownership of stock by a trust in the holding company was not objectionable to General Motors Corporation. In 1948, as the record will show, General Motors Corporation adopted a new policy by which neither a trust nor a holding company was to be permitted to own stock in any Chevrolet dealership. As a result of this policy, General Motors demanded that the trust and holding company be removed from ownership of stock in the three corporations, and it was suggested by the Regional Manager for Chevrolet Motor Division of the Pacific Region that the takeout, if you may call it that, of the trust and the personal holding company from the corporation be made in such a manner as to not to disturb the relative control of the Phelps, Kenyon, and Howell shares. In other words, to make the takeout in such a manner that after it was completed, Mr. Kenyon and Mr. Phelps would equally control the capital in Mid-Valley dealerships and Mr. Kenyon, Mr. Howell, and Mr. Phelps would equally control one third each of the Howell dealership.

As the result of the General Motors demand that this be done, the Capitol Chevrolet Company and Mid-Valley Chevrolet Company redeemed about 77 per cent of the shares owned by the James A. Ken-

yon Trust and the Howell Chevrolet Company redeemed about 83 per cent of the stock owned by the trust, and in order to continue this ratio of control, at the same time had redeemed about 30 per cent of the Phelps shares and about 33 per cent of the Howell shares. The Respondent—

The Court: What happened to the remaining shares of the trust that were not redeemed?

Mr. Thayer: As the record will show, Your Honor, it was impossible, because of the Capital Standards Provisions established by General Motors and Chevrolet Motor Company to take out all of the trust shares at the same time because it would reduce the working capital of the companies below the minimum requirements. Therefore, it was planned that the balance of the trust shares would be taken out by a direct purchase by Mr. Kenyon from the trust, but being trustee, he had to get Court approval for the purchase.

An action was filed in 1949 for him to make the purchase. It dragged along because of the inability to secure—there were many minors involved—it dragged along until 1950 when the question became mute because the Capitol Chevrolet Company bought out the entire Kenyon interests; the Mid-Valley Chevrolet Company bought out the Phelps interest, and the Howell bought on it. They all went out at the same time, but it was always intended that the trusts be taken out 100 per cent. It had to be done in two bites, however.

The Respondent's contention is that the redemption of these shares constituted an ordinary divi-

dend to all three of the Petitioners. It is the Petitioners' position that by reason of the fact that the takeout was occasioned by demand of General Motors Corporation, that there was a valid business purpose behind it, and that redetermination was not made at such a time or in such a manner as to be essentially to the taxable dividend.

In the case of Jackson and Virginia Howell, there is one minor issue on the compensation. The facts have been stipulated on that so that it would become mute, having found the fact that the compensation received, the taxability follows. There is no issue involved in that matter.

We have taken the depositions of three people, Mr. F. Norman Phelps, one of the Petitioners and also one of the key witnesses; the deposition of Mr. John Lester Connell, the Regional Manager of the Chevrolet Motor Division for the Pacific Region in 1948; and the deposition of James A. Kenyon, the trustee of the James A. Kenyon Trust, and the owner of all the stock in the JAK Co.

At this time, on behalf of the Petitioners, I would like to offer in evidence the direct and redirect testimony of the three men whose depositions have been taken. I offer it, subject to the objections made by the Respondent at the time the depositions were taken.

Mr. Townsend: Your Honor, the Respondent at this time will also offer the cross-examination and renew its objections to the direct and redirect of the Petitioner.

The Court: I don't quite understand what the

objections are. Are they objections that go to the entire deposition or specific questions?

Mr. Thayer: There are three specific questions. That is one thing we wanted to ask Your Honor today. Do you want those objections argued now or leave that for the briefs?

The Court: What is the general character of the objections?

Mr. Thayer: In the case——

Mr. Townsend: I may say, Your Honor, that Respondent will undoubtedly not renew all the objections made but just some of them.

Mr. Thayer: Actually, I think in each case, it is merely an objection because it would require a conclusion of the witness.

Mr. Townsend: I believe it is a hearsay one in there and a conclusion. Strictly on evidence, Your Honor, hearsay and conclusion.

The Court: I will receive the depositions, and I will consider only such objections as Respondent renews in his brief.

Mr. Thayer: That is the same for the Petitioner?

The Court: For both. If the parties can get together to eliminate all objections, it will be even more desirable.

Mr. Thayer: As a matter of fact, they are very minor. I know I couldn't get together on Mr. Townsend's objection on one minor one of his. I think the briefs would be the better place to renew it and argue the point.

The Court: I will consider only such objections as are renewed in the briefs.

Mr. Thayer: And the depositions are acceptable?

The Court: They are acceptable.

Mr. Thayer: At this time, I would like also to offer on behalf of the Petitioners a stipulation of facts which has been signed by both the Petitioners' counsel and the Respondent, counsel for the Respondent.

The Court: The stipulation will be received.

Mr. Thayer: Now, I think that Mr. Cameron Aikens, counsel for Jackson and Virginia Howell, would at this time like to put Mr. Howell on the stand. Oh, excuse me—In addition to the stipulations of fact, we have a number of joint exhibits, all of which are referred to in the stipulation. They begin with exhibit 1-A and run through exhibit 23-X, with the exception that exhibit 13, one of the letter combinations is inadvertently misstated on these exhibits. There is an exhibit 16-P and exhibit 17-R; through inadvertence, Q was omitted. All the exhibits are here, but they have been misnumbered to that extent. Does the Court wish to have that numbering changed to conform to the rules?

The Court: You may leave them as they are. I will receive the exhibits as part of the stipulation.

Mr. Thayer: As part of the stipulation.

Opening Statement on behalf of the Commissioner of Internal Revenue by Mark Townsend.

Mr. Townsend: If the Court please, this pro-

ceeding involves deficiencies in income tax for the taxable year 1948 in the following amounts. Jackson Howell and Virginia Howell, \$20,957.40; F. Norman Phelps and Alice Phelps, \$107,926.06; James A. Kenyon Trust, \$96,057.27. In addition, a deficiency for 1949 in the case of Mr. and Mrs. Howell only in the amount of \$2,729.16.

As Mr. Thayer has indicated, there was one other adjustment which was not in issue which affects the taxability of Mr. and Mrs. Howell for 1948 and 1949. That issue has been settled and the settlement has been incorporated in the stipulation of facts. I may point out that that is in paragraph twenty-four of the stipulation of facts, as that paragraph would not appear to be material to this proceeding. The reason that twenty-four is in the stipulation is to take care of the settlement of that issue.

The issue involved in this case is whether amounts received by the Petitioners in exchange for stock and reported by them as long term capital gain constituted dividends under Section 115G of the Internal Revenue Code of 1939. It is the Respondent's contention that Section 115G applies. That the redemptions were essentially equivalent to dividends and that the amounts received should have been reported as ordinary income.

We are in substantial agreement on the facts, as Mr. Thayer stated in his opening statement. I may point out, we are somewhat at disagreement on whether or not it was actual General Motors policy

that required this keeping of equal interests among the shareholders. The effect of that suggestion, I might add, is in probable dispute between the parties. Further, with respect——

The Court: I suppose the question is as far as these Petitioners are concerned, is not whether or not it was General Motors policy, but whether they reasonably thought it was.

Mr. Townsend: That is right.

Mr. Aikens: On behalf of the Petitioners' Howell, that is exactly our position.

Mr. Townsend: Now, with respect to the Petitioners' contention that a business purpose existed for this redetermination, namely, the policy of General Motors, to keep these interests the same and that a holding company and trust be eliminated, it is Respondent's position that this professed business purpose was used as a cloak to distribute accumulated surpluses in the business of Capital gains.

The Court: Is this case somewhere in between the Cartier-Tiffany case and the Boyle case?

Mr. Thayer: I think, if the Court please, I think this is very akin to the Smith case. There is really, in a sense, we had a compulsion for what we did, a very real one, and the Court will find from the record business pressure to do what we did in the manner in which we did it. I think it is the Smith case.

Mr. Townsend: Your Honor, Respondent does rely on several cases, but would prefer to wait to go into them on my brief, if I may.

Mr. Aikens: May I say, may it please the Court and counsel, that I believe I have read all the cases in this type of transaction. I will be frank to admit that I know of no one case that is on all fours with this particular one. The position of the Petitioners' Howell is briefly that there was a compelling business necessity so far as Jackson Howell was concerned in this transaction. If there wasn't, in fact, a compelling business necessity based upon his experience and knowledge, he had every reason to believe that it was a compelling business necessity.

May I call the witness, Jackson Howell.

Whereupon,

JACKSON HOWELL

called as a witness for and on behalf of the Petitioner, having been first duly sworn, was examined and testified as follows:

The Clerk: State your name and address, please.

The Witness: My name is Jackson Howell, 3342 Via Lido, Newport Beach, California.

Direct Examination

Q. (By Mr. Aikens): You are one and the same Jackson Howell named as a Petitioner in the case of Jackson Howell and Virginia Howell, Petitioners, versus Commissioner of Internal Revenue, bearing docket 51216, are you? A. I am.

Q. What is your present capacity with Howell Chevrolet Company?

A. President and sole stockholder of Howell Chevrolet Company.

(Testimony of Jackson Howell.)

Q. Will you please tell the Court, commencing chronologically, your background with the General Motors Corporation, or any or all of its subsidiaries.

A. I was first employed by the General Motors Acceptance Corporation in Los Angeles in 1929 as their Special Collection Department Manager. Subsequently, for the next number of years, I was continuously employed by them in various capacities, from Special Collection Manager to Credit Manager to Field Manager, and in 1931, to Branch Manager of their operation in San Diego, until in the early part of 1933, I was transferred to the Chevrolet Motor Division of the General Motors Sales Corporation.

My first position at that time was that of District Manager. Subsequently, I held the position of Organization Manager in Los Angeles, Assistant Zone Manager in Los Angeles, Branch Manager in Great Falls, Montana, Branch Manager at Oakland, California, and in the latter part of '41, Assistant Regional Manager at Oakland, California.

In 1944, I left the Chevrolet Motor Division to become the Chevrolet Dealer at Glendale, California.

Q. You are presently the Chevrolet dealer in Glendale, California? A. I am, sir.

Q. And have been since 1944?

A. Since 1944.

Mr. Aikens: Mr. Clerk, may I have the deposition of Mr. Phelps.

(Testimony of Jackson Howell.)

Mr. Thayer: At this point, Your Honor, if I may, I neglected to offer in evidence the exhibits which are appended to the depositions of Mr. F. Norman Phelps and James A. Kenyon. I would at this time like to offer those in evidence.

Mr. Townsend: No objection.

The Court: They will be regarded as admitted.

Q. (By Mr. Aikens): Mr. Howell, I wish to call your attention at this time to two photostatic copies of letters presumably on the letterhead of the Chevrolet Motor Division and for purposes of identification, they have been described as Petitioners' exhibit 31 and Petitioners' exhibit 32, appended as an exhibit to the depositions of F. Norman Phelps, and I ask you whether or not you are familiar with the contents of those letters.

A. Yes, I am.

Q. Based upon your extensive experience with the General Motors Corporation and as an executive or former executive of the Chevrolet Motor Division of General Motors Corporation, what would your reaction have been had you received those letters on or about the date thereof?

A. Well, in November of 1948, in southern California and pretty generally across the country, Chevrolet franchises were regarded as being a valuable franchise. It is a year to year proposition. Had I received this letter, signed by the Zone Manager, I would have felt most definitely that I would have to comply with the request as set forth in the letter, and in my mind, I most definitely

(Testimony of Jackson Howell.)

would have felt that my franchise would be in jeopardy had I not followed it, the request in this letter, by the factory either not having renewed the selling agreement for the following year or possibly by a cancellation.

Q. For the purposes of the record, you are presently looking at Petitioners' exhibit 31?

A. 31.

Q. Would your answer be the same as you have just given with respect to Petitioners' exhibit 32-A?

A. It certainly would, yes, sir.

Mr. Aikens: Mr. Clerk, may I have the deposition of Mr. Connell.

Q. (By Mr. Aikens): You have heard today that the deposition of John Lester Connell has been introduced into evidence, subject to certain objections that were there taken or later after taken. Are you familiar or do you know a man by the name of John Lester Connell?

A. Yes, I do.

Q. Do you know what position he held with the Chevrolet Motor Division of the General Motors Corporation during the year 1948?

A. Mr. Connell was the Regional Manager for the Chevrolet Motor Division for the Pacific Coast Region. His office is located in Oakland, California.

Q. Have you read, Mr. Howell, the deposition given by John Lester Connell in these proceedings?

A. Yes, I just read it this morning.

Q. Have these same suggestions been made to you by Mr. Connell that Mr. Connell testified that

(Testimony of Jackson Howell.)

he made to Mr. F. Norman Phelps? And as a Chevrolet dealer, what would your reaction have been?

Mr. Townsend: The Respondent objects to that question on the grounds that it calls for a conclusion of this witness. It is based on a hypothetical question, and I don't believe this witness has been qualified to answer it.

Mr. Aikens: May it please the Court and counsel, I suggest that an adequate foundation has been laid of many years of participating as an employee and as an executive of the General Motors Corporation. We have likewise laid the foundation that the witness has been a Chevrolet dealer since 1944, approximately. He has read the deposition taken, The question, whether it be framed hypothetically or otherwise, I submit is a good one.

The Court: You may answer.

A. I would have felt exactly the same way about Mr. Connell's requests as indicated in his deposition that I have indicated in response to the exhibits 32 and 32. Most emphatically, that a request coming from the Regional Manager of the Chevrolet Motor Division in 1948 to a dealer in my opinion meant comply with it or be cancelled.

Q. (By Mr. Aikens): Directing your attention again back to the year of 1948, it has been stipulated that your compensation from Howell Chevrolet amounted to \$50,690.89 in 1948, and \$48,752.25 in 1949. Did you have in 1948 or 1949 any personal desire or personal reasons to draw money

(Testimony of Jackson Howell.)

from Howell Chevrolet in excess of the amounts that you drew as compensation?

A. No, there was no necessity for it as far as I was personally concerned. I had no occasion to need any more money. As a matter of fact, the withdrawal of the money in the manner in which it was taken out, in my opinion, placed a hardship on the operation of Howell Chevrolet for the simple reason that subsequent to the liquidation of this trust, it was necessary for Howell Chevrolet to borrow money on inventories which had not been the case prior to the taking out of the trust, and the holding company.

Mr. Aikens: If the Court has no further questions, I am finished with the direct.

Cross Examination

Q. (By Mr. Townsend): Mr. Howell, how did you learn of the suggestions by Mr. Connell? Were they made to you at all?

A. No, they were not.

Q. When did you first learn of them?

A. I first learned of them from a telephone call from Mr. Phelps about the time the trust and the holding company was taken out. I was told to issue checks on certain amounts and that is the first I knew of it. Mr. Phelps had the contract at that time with the factory organization.

Q. Well, referring specifically now to the suggestion of Mr. Connell that the stock proportionate

(Testimony of Jackson Howell.)

ownership remain the same, you learned that information from Mr. Phelps?

A. That is correct.

Q. You don't know in what manner it was given or anything else?

A. Only from reading—subsequently reading his deposition.

Q. Mr. Howell, what part did you play in this redetermination of stock? Did you play any personal part?

A. No, I did not. Let me understand it. What do you mean?

Q. In the formulating of the plans or the manner in which it was accomplished.

A. No, I did not. As I mentioned, the first I knew about it was after the die was cast. I was told to issue the checks.

Q. After the plan had been adopted?

A. Subsequently.

Q. You did not vote yes or no yourself or have an opportunity to vote?

A. No, I did not.

Mr. Townsend: That is all.

The Court: The suggestion of General Motors could have been accomplished, could it not, by having the corporation redeem the trust shares and then having the remaining stockholders just purchase additional shares from the corporation to equalize the desired proportion.

(Testimony of Jackson Howell.)

The Witness: Subsequently, I think it was discussed, although I wasn't present. I think it was discussed. I think the difficulty at the time was that Kenyon, who had the trust and the holding company, didn't have the cash money to come up with in a sufficient quantity to maintain that balance.

The Court: Were the activities of the corporation in any way curtailed as a result of any re-determinations?

The Witness: They, in reality, were. We were operating on the basis of it carrying a good percentage of our own paper and with our inventories free and clear, without being encumbered—I am speaking now in the instance of Howell Chevrolet and immediately after this distribution or the taking out of the holding company and the trust—it wasn't noticeable for the simple reason that we were approaching the year end when the inventories were low, but as the succeeding months went by, we got into our selling period, February and March and April, and then we had to go out and borrow money against our inventories which would not have been necessary had the money remained in. We had to pay interest as a result of it, whereas, previously, we carried our own inventories.

The Court: You didn't curtail any of your operations as a result of liquidations. You tried to sell as many cars as you could get.

The Witness: That is right, but from my stand-

(Testimony of Jackson Howell.)

point as the operator of Howell Chevrolet and the President of the Howell Chevrolet, we would have been, in my opinion, much better off had those funds remained in the business.

Mr. Aikens: No further questions.

Mr. Townsend: The Respondent rests.

Mr. Thayer: That is all, Your Honor.

What is your Honor's wish as to briefs?

The Court: Do the Petitioners have any further evidence to present?

Mr. Thayer: The Petitioners rest.

Mr. Townsend: Rest.

Mr. Aikens: That is all for the Petitioners' Howell.

The Court: Do the Petitioners intend to file separate briefs or will they collaborate in a single brief?

Mr. Thayer: We will collaborate, Your Honor.

The Court: The Petitioners' brief will be due in forty-five days. The Respondent's in thirty days thereafter, and the Petitioners may reply in twenty days.

The case is dismissed.

(Whereupon, at 2:40 p.m., Monday, September 12, 1955, the hearing in this matter was closed.)

[Endorsed]: T.C.U.S. Filed October 26, 1955.

[Endorsed]: No. 15386. United States Court of Appeals for the Ninth Circuit. F. Norman Phelps and Alice Phelps, Petitioners, vs. Commissioner of Internal Revenue, Respondent. Transcript of the Record. Petition to Review a Decision of The Tax Court of the United States.

Filed: December 11, 1956.

Docketed: December 17, 1956.

/s/ PAUL P. O'BRIEN,

Clerk of the United States Court of Appeals for the Ninth Circuit.

In the United States Court of Appeals
for the Ninth Circuit

Docket No. 15386

F. NORMAN PHELPS and ALICE PHELPS,
Appellants,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Appellee.

STATEMENT OF POINTS ON WHICH AP-
PELLANTS WILL RELY

1. The Tax Court of the United States erred in finding that the distributions made by the three corporations, Capitol Chevrolet Co., Mid-Valley Chevrolet Co. and Howell Chevrolet Co. to appellants on December 21, 1948, in redemption of a part of appellants' shares in each of such corporations

were made at such time and in such manner as to be substantially equivalent to distributions of taxable dividends which are to be treated as taxable dividends as provided in Section 115(g) of the Internal Revenue Code of 1939.

2. The Tax Court of the United States erred in failing to find that the distributions in redemption of a part of appellants' shares in each of the three corporations, Capitol Chevrolet Co., Mid-Valley Chevrolet Co. and Howell Chevrolet Co. which were made on December 21, 1948 were not made at such time or in such a manner as to be substantially equivalent to distributions of taxable dividends.

3. The Tax Court of the United States erred in failing to find that the amount received by each of the appellants from each of the three corporations, Capitol Chevrolet Co., Mid-Valley Chevrolet Co. and Howell Chevrolet Co., upon the redemption of their shares of stock in such corporations on December 21, 1948, constituted an amount received in partial liquidation of the respective corporation which is to be treated as in part or full payment in exchange for such corporation's shares as provided in Section 115(c) of the Internal Revenue Code of 1939.

4. The Tax Court of the United States erred in finding that the redemptions of the stock of the three corporations, Capitol Chevrolet Co., Mid-Valley Chevrolet Co. and Howell Chevrolet Co., which were made on December 21, 1948 caused the capital of each of said corporations to fall below the

standards set by the Chevrolet Motor Division of General Motors Corporation.

5. The Tax Court of the United States erred in finding that there is a deficiency in appellants' federal income taxes for the year 1948 in the amount of \$107,926.06.

/s/ W. P. THAYER,
Attorney for Appellants

Acknowledgment of Service attached.

[Endorsed]: Filed January 8, 1957. Paul P. O'Brien, Clerk.

